

F NO. 195/1021/13-RA

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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, Cuff Parade,
Mumbai- 400 005

F NO. 195/1021/13-RA /2625

Date of Issue: 09.04.2021

ORDER NO. 170 /2021-CX (WZ) /ASRA/MUMBAI 303.2021 DATED
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.

Applicant : M/s Elder Pharmaceuticals Ltd.

Respondent : Commissioner of Central Excise, Raigad Commissionerate

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal
No.SDK/199/RGD(R)/2013-14 dated 08.10.2013 passed by the
Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

This Revision Application is filed by M/s Elder Pharmaceuticals Ltd., C/9, Dalia Industrial Estate, Off Veera Desai Road, Andheri(W), Mumbai 400 053 (herein after as "the Applicant") against the Order-in-Appeal No.SDK/199/RGD(R)/2013-14 dated 08.10.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III

2. The brief facts of the case are that the Applicant, exporter had filed two rebate claim dated 29.01.2013 for Rs. 98,051/- (Rupees Ninety Eight Thousand and Fifty One Only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 for the goods exported under ARE-1 No. 304/12 dated 30.05.2012. The Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 102/12-13/A.C.(Rebate)/Raigad dated 09.04.2013 sanctioned the rebate of Rs. 98,051/- under the provisions of Section 11B of Central Excise Act, 1944. Aggrieved, the Department then filed appeal with the Commissioner of Central Excise(Appeals), Mumbai-III on the grounds that the rebate sanctioning authority had granted rebate on invalid documents as the invoices issued by the manufacturing unit viz. M/s. Universal Medicare Pvt. Ltd., Valsad, Gujarat were in the name of the buyer i.e. M/s. Elder Healthcare Ltd., which is other than the company claiming rebate i.e Applicant. Thus the Applicant had not received the goods from the manufacturer/ job worker and had therefore failed to convince that the goods under export had been received by them legally prior to export under documentary evidence resulting in misleading the Department in as much as claiming an unlawful rebate. As per Para 8.2 of Chapter 8 of CBEC's Central Excise Manual of Supplementary Instructions, Invoice issued under Rule 1.1 is required for filing claim of Rebate. Therefore, sanctioning of rebate of Rs. 98,051/- to the Applicant was inadmissible and was in violation of Rule 18 of Central Excise Rules, 2002. The Commissioner(Appeals) vide

Order-in-Appeal No. SDK/199/RGD(R)/2013-14 dated 08.10.2013 allowed the Departmental appeal.

3. Aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The Applicant had bought goods from M/s Elder Health Care Ltd. and received the same through their contract manufacturer M/s Universal Medicare Pvt. Ltd.
- (ii) M/s Universal Medicare Pvt. Ltd. had issued Excise Invoice No L120100 and L120101 under Rule 11 in the name of M/s Elder Health Care Ltd. while clearing the goods and paid excise duty as applicable of Rs. 98,051/-. M/s Elder Health Care Ltd issued No Objection Certificate to the effect that they do not have any objection if the rebate of duty paid on export of goods Rs. 98,051/- was claimed by the Applicant.
- (iii) The Applicant prepared ARE-1 No.304 and submitted the same to the Superintendent of Central Excise for verification of goods. The Superintendent of Central Excise verified the goods, value of goods mentioned in the ARE-1 No 304, amount of duty paid on the goods cleared for export and appended their signature in token of having done the verification.
- (iv) The Applicant prepared the commercial invoice No.ELD/005/2012-2013 and submitted the same to Customs for their verification and preparing the Shipping bill. The Custom officer verified the goods mentioned in the commercial invoice, checked the duty payment particular in the ARE-1 No 304 and appended his signature on the commercial invoice and ARE-1 No 304 in token of having done the verification. The goods were exported vide Shipping Bill No 9170573 dated 31.05.2012, Bill of Lading No. MOLU 13901005747 and Mate Receipt No. 59600041.

- (v) Money was realized and Bank Realization Certificate was issued by the Bank. The goods were duly verified by Excise and Custom authorities and exported without any doubt.
- (vi) The Deputy Commissioner(Rebate), Raigad had confirmed the goods cleared from the factory under ARE-1 No. 304 are the same goods which had been duly exported under Shipping Bill No 9170573 dated 31.05.2012, Bill of Lading No. MOLU 13901005747 and Mate Receipt No. 59600041 and then sanctioned the rebate claim. Therefore, the goods cleared from the factory under Excise Invoice are the same goods on which appropriate excise duty have been paid and duly exported by the Applicant under Excise supervision.
- (vii) The discrepancy in the entire chain of events was that the Excise Invoice was endorsed in the name of the Applicant. It is the contention of the Department that since the Excise Invoices were not in the name of the exporter, benefit of rebate should not be granted to the exporter.
- (viii) M/s. Elder Health Care Ltd., is the sister concern of the Applicant. It is common knowledge that in the manufacturing industry to sell /supply goods on short term basis to each other in times of short supply, etc. They placed order for goods on M/s. Elder Health Care Ltd., who then supplied the goods through their contract manufacturer M/s. Universal Medicate Pvt. Ltd. There was no dispute about payment of duty. Further there was no dispute about receipt of the goods in the factory premises of the Applicant nor was there any dispute about payment of value to M/s. Elder Health Care Pvt. Ltd. The deviation, at the most, can be called as a clerical or procedural lapse. Hence, when the goods were exported, rebate of the duty should not be denied to Applicant. In support of their above submissions, they relied on few case laws:
- (a) Honble Tribunal in the case of Neptune Stampings [2009 (246) ELT 254 (Tri-Ahmd)];

(b) Hon'ble Tribunal in the case of Gautam Weaving Mills [2008 (230) ELT 147 (Tri-Mumbai)];

(c) Hon'ble Bombay High Court in the case of M/s Khandelwal Laboratories [2011 (263) ELT A139 (Born)]. Hence, there is no dispute about admissibility of Cenvat credit on endorsed invoices. The ratio of the said case law is squarely applicable to the instant case. On the issue of receipt of the goods in the factory:

In the instant case, there was no dispute about receipt of the goods into the factory. Hence, Cenvat credit is admissible. The ratio of the above said case law is squarely applicable to the instant case.

(ix) In the current case, there is no dispute about receipt of the goods into the factory. Hence, Cenvat credit is admissible. In this they relied on the case law in the case of Deepthi Insulated Cables Pvt. Ltd. [2000 (123) ELT 933 (Tri.)].

(x) There are catena of judgements which held that in the light of facts of the present case in hand, Cenvat credit is admissible and rebate is admissible. In support of their above submissions, they relied on few case laws:

(a) Sanket Industries Ltd. [2011(268) ELT 125 (GOI)] ;

(b) CESTAT judgment in the case of CCE Vapi Vs. ITW India Ltd.;

(c) SULSHA INTERNATIONAL v/s UOI [1989 (39)ELT 503 (SC)];

(d) FORMICA INDIA v/s Collector of CEx [1995 (77)ELT 511 (SC)];

(e) Mangalore Chemicals and Fertilizers Ltd. v/s Dy. Commissioner [1991 (55) ELT 437 (SC)].

(xi) Further there was no allegation that the goods cleared for export has been diverted into the local market and there was no evidence to establish that the goods cleared for export was not eventually exported

out of India by the Applicant. There is substantive evidence in the export documents to substantiate that the goods cleared from the factory was in fact exported out of India.

(xii) The Applicant prayed that the Order-in-Appeal be set aside and the rebate claim of Rs. 98,051/- be allowed.

4. A Personal hearing in this case was fixed on 14.03.2018, 06.08.2018 and 22.08.2019 but none appeared. In view of change in Revisionary Authority, final hearing was fixed on 06.01.2021, 13.01.2021, 20.01.2021 and 26.02.2021, however no one 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/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of the records, Government observes that the Applicant, exporter had filed rebate claim dated 29.01.2013 for Rs. 98,051/- for Central Excise duty paid on excisable goods exported from the M/s. Universal Medicare Pvt. Ltd., manufacturer under ARE-1 No. 304/12 dated 30.05.2012. The Superintendent, Central Excise, Range-Sarigam, Division-Vapi, Commissionerate-Vapi vide letter dated 04.04.2013 confirmed the verification of duty payments. The Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 102/12-13/A.C.(Rebate)/Raigad dated 09.04.2013 sanctioned the rebate of Rs. 98,051/- under the provisions of Section 11B of Central Excise Act, 1944. Aggrieved, the Department then filed appeal with the Commissioner of Central Excise(Appeals), Mumbai-III on the grounds that the rebate sanctioning authority had granted rebate on invalid documents as the invoices issued by the manufacturing unit viz. M/s. Universal Medicare Pvt. Ltd., Valsad, Gujarat were in the name of M/s. Elder Healthcare Ltd., Buyer and not in the name of the Applicant. The Commissioner(Appeals) vide Order-

in-Appeal No. SDK/199/RGD(R)/2013-14 dated 08.10.2013 allowed the Departmental appeal.

7. Government notes that M/s Universal Medicare Pvt. Ltd. manufacturer had issued Excise Invoice No L120100 and L120101 both dated 29.05.2012 under Rule 11 in the name of M/s Elder Health Care Ltd., buyer while clearing the goods and paid excise duty as applicable of Rs. 98,051/-. The Applicant submitted that M/s. Elder Health Care Ltd., is their sister concern and it is common knowledge that in the manufacturing industry to sell /supply goods on short term basis to each other in times of short supply, etc. They had placed order for goods on M/s. Elder Health Care Ltd., who then supplied the goods through their contract manufacturer M/s. Universal Medicate Pvt. Ltd. and there was no dispute about payment of duty. Further there was no dispute about receipt of the goods in the factory premises of the Applicant nor was there any dispute about payment of value to M/s. Elder Health Care Pvt. Ltd. Government finds that the consignee in the two Excise invoices were in the name of M/s Elder Health Care Ltd. Hence the identity of goods cleared under ARE-1 and the one exported is not established, raising doubt about the actual export as well. Chapter 8 of the CBEC's Central Excise Manual at Para 8.3 discusses about the documents required to be submitted at the time of filing rebate claim. It is more so because the Applicant has not submitted any documents in their revision application. Hence, Government is in agreement with the findings of the Commissioner(Appeals) that submissions of proper and valid documents in mandatory requirement for rebate claim. Since the Applicant as Exporter should be well aware of the provisions of the Central Excise Act and non-following these condition is not procedural lapses, but is violation of mandatory requirements. It amounts to not following the conditions itself.

8. In view of the above position, Government finds no infirmity in the Order-in-Appeal No.SDK/199/RGD(R)/2013-14 dated 08.10.2013 passed by the

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Commissioner of Central Excise(Appeals), Mumbai-III and therefore, upholds the same.

9. The Revision Application filed by the Applicant is rejected being devoid of merits.

Shrawan
30/3/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 70/2021-CX (WZ) /ASRA/Mumbai Dated 30.3.2021

To,
M/s Elder Pharmaceuticals Ltd.,
C/9, Dalia Industrial Estate,
Off Veera Desai Road,
Andheri(W),
Mumbai 400 053.

Copy to:

1. The Commissioner of GST& Central Excise , Belapur Commissionerte, 1st floor, CGO Complex, Sector 10, CBE Belapur, Navi Mumbai 400 614.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy. .