

REGISTERED  
SPEED POST



F.No.195/288/2015-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.....

ORDER NO. ~~174/2018-Cx~~ dated ~~12-11-2018~~ 2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. JAL-EXCUS-000-APP-103-15-16 dated 25.06.2015 passed by the Commissioner (Appeals), Chandigarh -I.

APPLICANT : M/s. Torrent Pharmaceuticals Ltd.,

RESPONDENT : Commissioner of Central Excise, Chandigarh - I

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**ORDER**

A Revision Application No. 195/288/2015-RA dated 21.09.2015 has been filed by M/s. Torrent Pharmaceuticals Ltd., (hereinafter referred to as the applicant) against Order-in-Appeal No. JAL-EXCUS-000-APP-103-15-16 dated 25.06.2015, passed by the Commissioner (Appeals), Chandigarh - I, who rejected their appeal and has upheld the Order-In-Original rejecting the rebate claims of the applicant for Rs. 2,09,213/-

2. The brief facts of the case leading to the filing of this Revision Application are that the applicant had filed rebate claims of Rs. 6,10,071/- under Rule 18 of C.E.R., 2002, read with notification no. 21/2004-CE (NT) dated 06.09.2004, out of which claim of Rs.2,09,213/- was rejected for the reason that the rebate of duty in respect of basic custom duty was not admissible and the rebate of duty for additional duty of customs only could be granted. The applicant filed an appeal with Commissioner (Appeals), but the same was also rejected. Being aggrieved, the Revision Application has been filed mainly on the ground that EOUs are governed by the provisions of section 3 of the Central Excise Act which provides for levy of Central Excise duty on excisable goods from EOU and, therefore, rebate of full duty of excise paid by them is admissible to them. They have also placed reliance on the following case laws:

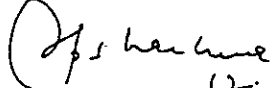
- i) Kumar Arch Tech Pvt. Ltd. 2013(290) ELT 372(Tri-LB)
- ii) Vikram Ispat 2000(120) ELT 800 (Tri-LB)
- iii) Metaclas to Industries 2013 (289) ELT 381 (Tri-Mumbai)

3. Personal hearing was held on 05.04.2018 Sh. S.J. Vyas, Advocate, appeared for personal hearing on behalf of the applicant and reiterated the grounds of revision as stated above.

4. The Government has examined the matter and it is found that the rebate of duty of excise paid at the rate of 21% on the inputs procured from an 100% EOU for manufacturing of exported goods has been reduced by Rs.2,09,213/- on the ground that the rate of duty of 21% comprised of basic customs duty and additional

duty of customs(C.V.D.). Therefore, the rebate of duty of excise in respect of C.V.D. only which is equivalent to central excise duty is admissible under Notification No. 21/2004-CE(NT) dated 06.09.2004 and there is no provision for granting rebate of duty in respect of basic customs duty. The applicant has vehemently contested the above line of view taken by the lower authorities and it is claimed that the total duty paid in respect of the inputs procured from 100% EOU at the rate of 21% of the value of the inputs is duty of central excise and consequently rebate in respect of full excise duty is admissible to them under Rule 18 of C.E.R. and Notification No. 21/2004-CE(NT). The Government finds that the lower authorities have confused the central excise duty paid by the applicant in respect of inputs as customs duty for the reason that measure of levy of central excise duty on the goods manufactured by the 100% EOU is equivalent to the aggregate of the customs duty under Section 3 of the Central Excise Act. But for this reason alone the excise duty leviable on such goods cannot be misconstrued as duty of customs and the legal reality is that the duty levied under Section 3 of the Central Excise Act on the goods manufactured by 100% EOU is central excise only even when the measure of levy is the customs duty. A large bench of CEGATE in the case of Vikram Ispat Vs. CCE, Mumbai – III 2000(120)ELT800(Tribunal-LB) has also clearly held that duty levied on the goods manufactured and cleared by 100% EOU to the D.T.A. is a duty of excise and not a duty of customs on account of a measure being the customs duty provided in Proviso to Section 3(1) of the Central Excise Act, 1944. Accordingly, the Government is fully convinced that entire duty paid by the applicant in respect of the inputs at the rate of 21% is duty of excise only and the rebate of the same is allowed under rule 18 of the C.E.R., 2002 and Notification No. 21/2004-CE(NT) as the compliance of these two governing provisions are not doubted by the lower authorities also in this case. The splitting of the central excise duty into B.C.D. and C.V.D. and to confuse the entire matter was wholly unwarranted. Further the Government's policy enshrined in the Rule 18 and Notification No. 21/2004-CE(NT) is that no tax should be exported along with the goods. Therefore, the Government is convinced that the Commissioner(Appeals) has passed an erroneous order by disallowing the rebate of duty of Rs.2,09,213/- to the applicant for the aforesaid untenable reason.

5. Accordingly, the Order-In-Appeal is set aside and the Revision Application is allowed.

  
12-4-18  
(R.P.SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s. Torrent Pharmaceuticals Ltd.,  
Village Bhud, Makhnu-Majra,  
Tehsil-Nalagarh, Baddi, District: Solan,  
Himachal Pradesh

ORDER NO. 174/2018-Cx dated 12-4-2018

Copy to:-

1. The Commissioner of the Central Excise, Chandigarh- I, C.R. Building, Plot No. 19, Sector-17 C, Chandigarh -160 017.
2. The Commissioner (Appeals) Customs, Chandigarh -I Plot No. 19, Sector 17-C Chandigarh.
3. The Assistant Commissioner of Central Excise, Division Shimla, Chandigarh-I Out House No. 2, Near TCP, MLA Crossing, Boileaugang, Shimla-5 (H.P.)
4. Mr. S.J. Vyas, advocates, C-4, Jay apartments, Opp. Azad Society, Ambawadi, Ahmedabad-380 015.
5. PS to AS(RA)
6. Guard File.
7. Spare Copy.

ATTESTED

(Debjit Banerjee)  
Sr. Technical Officer (Revision Application Unit)