



REGISTERED  
SPEED POST

F.No. 195/613-622/11-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.....09/11/12

ORDER NO. 18-27/13-Cx DATED 08-01-2013 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. P-III/RS/117-126/2011 dated 31.05.2011  
passed by Commissioner(Appeals-III) Central Excise,  
Pune.

APPLICANT : M/s Sohan Healthcare Pvt. Ltd., Pune.

RESPONDENT : The Commissioner, Central Excise, Pune-III

\*\*\*\*\*

ORDER

These revision applications are filed by M/s Sohan Healthcare Pvt. Ltd., Pune against the Order-in-Appeal No. P-III/RS/117-126/2011 dated 31.05.2011 passed by Commissioner(Appeals-III) Central Excise, Pune with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Pune-VII Division, Pune-III Commissionerate.

2. Brief facts of the case are that the applicant filed rebate claims in terms of Section 11B in respect of finished goods manufactured and cleared for export reportedly through the Merchant Exporter under Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules, 2002. The rebate claims were sanctioned. After sanction, the rebate claims were subjected to review and found to be legally incorrect during the review and hence appeals were preferred under section 35E(4) of the Central Excise Act, 1944 on the following grounds:-

- (i) The goods in question were cleared by the applicant under self-sealing procedure to an Indian Consignee viz. M/s Q. Source, Chembur, Mumbai, M/s Euresian, 101, marine Chambers, 11 New Marine Lines, Mumbai and M/s Enaltec Ltab Pvt. Ltd. CBD, Belapur, Navi Mumbai and not to a foreign destination.
- (ii) They failed to mention the details of the foreign consignee/country of destination on the ARE-1s and corresponding invoices, Shipping Bills etc.
- (iii) Exported goods cannot be correlated with those cleared from the factory in the absence of foreign consignee name and address in the vital export documents and hence the export is not genuine.

3. The Commissioner (Appeals) allowed the above appeals thereby rejecting the entitlement of the applicant herein to the claimed rebates.

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 The applicant is a manufacturer of Metformin in HCL covered under chapter 2942 and is exporting goods on its own as well as through the merchant exporter. In the rebate claims cases under reference the merchant exporters have used disclaimer in favour of the applicant.

4.2 In the shipping documents they have obliterated the details of commercial significant i.e. buyers and the consignee details as per the practice and the same policy has been permitted by the DGFT. Initially they were granted rebate but the Commissioner has taken a view that above obliteration of information is not acceptable. The Commissioner (Appeals) without taking into consideration of the above information submitted before him after obtaining from the merchant exporter rejected their claims.

4.3 Now the above obtained documents/consignees & buyers details as obtained from the merchant exporter has been incorporated. The complete set of documents are now produced before present revisionary authority. The individual rebate claim is explained ARE-1 wise w.r.t. corresponding Shipping Bills, Bill of Lading and B.R.Cs. copies of transport documents with respective form H are also enclosed.

4.3 The applicant as manufacturer has exported their product through five different merchant exporter which are (i) M/s Euresian (ii) M/a Enaltec Labs (iii) M/s Hildose (iv) M/s Q. Source (v) M/s Polydrug Laboratories (P) Ltd.

4.4 After issue of individual Central Excise Invoice in the name of Indian consignee i.e. merchant exporter the respective ARE-1s were prepared and signed by both i.e. the applicant as manufacturer and the merchant exporter as for purpose of export. Their after goods were removed for export as per transport documents

and duplicate and triplicate copies of the ARE-1 were submitted and got certified from the jurisdictional Central Excise authorities subsequently.

4.5 Thereafter the corresponding Shipping Bills have been prepared with full details of merchant exporter and consignee Vs. Buyer of Barzil and Sough Africa, Indonesia etc. as details therein. The respective Shipping Bills were having corresponding ARE-1 number, date and Pune-III Commissionerate alongwith proper details of their export item in proper packing as done in the factory of manufacturing vide corresponding Central Excise Invoices. The corresponding and respective bill of Lading has all details above documents stand certified by the respective preventive and customs officers at the time of exports under their supervision. After the relevant customs officials have examined/assessed the goods for export and certified that the duty paid goods removed from the factory of M/s Sohan Healthcare Pvt. Ltd. Have been exported their rebate claim can not be disallowed.

4.6 The submitted copies of the Bank Realization Certificate which can be co-related backward with all the above submitted export documents then it can be independently conformed that the impugned goods have been exported and received by the recipient because no buyer will defect payment if he has not received those goods which were ordered by them.

4.7 The goods were cleared to Indian Conginee i.e. Merchant Exporter for export & the relevant excise invoice was marked for export. The exports stand completed in compliance with the law & all the proof listed above establish the same beyond doubt. The documents viz. ARE-1, S/B, B/L, BRC, Form H etc. are logical conclusion. The documents are in full compliance with the Notification No. 19/2004-CE(NT) dated. 06.09.2004 therefore the rebate claims cannot be rejected. It is pertinent to point out that in the past, the rebate claims were made by the merchant exporters based on the same set of documents & the same were settled by the Maritime Commissioner's office, Khandeshwar. Therefore there is no deficiency of whatsoever nature in the rebate claim documents. The only change is that the merchant exporters are not interested in purusing the claims & block funds therefore he

alternative of disclaimer certificate is being used to enable the manufacturer i.e. Sohan Healthcare P. Ltd. To claim the rebate. Therefore there is nothing wrong in terms of the law. Please note that in case of merchant exports, there are two transactions involved. 1. The procurement of goods by the merchant exporter 2. The export of the goods procured from the merchant exporter. Therefore, there is nothing wrong with the documentation carried out by us. The goods are sold to the merchant exporter but at the same time, it is clearly specified that these goods are meant for exports. If the goods were not removed for exports then there was no reason to carry out the ARE-1 procedure. The exports are effected as established by the above referred documents & therefore there is absolutely no contravention of the law.

4.8 The objection that the shipping documents are devoid of the name & address of the foreign consignee. M/s Euresian is a merchant exporter therefore they do not wish to reveal the name of the foreign buyer to us. Therefore, these details are obliterated from the shipping documents. The goods are actually shipped to Brazil. The facts can be independently verified by the department with the Customs, Shipping line or the overseas buyer. The obliteration of consignee detail cannot be treated as tampering with the shipping documents under any circumstances. This is merely a discrepancy & the same stands rectified by placing on record, the revised set of documents received from M/s Euresian. Therefore, the discrepancy stands resolved to the complete satisfaction of the department. We regret the inconvenience caused but the fact remains beyond doubt that the goods have been actually exported. The third ground for rejection of the rebate claim is that exported goods cannot be correlated with those cleared from the factory in the absence of foreign consignee name & address missing in the vital export documents. Even if it is presumed for the sake of argument that the consignee details missing from the shipping documents (not missing after the submission of the revised set of documents) then also the fact that goods have been exported out of India is fully visible & this satisfies the legal proviso for the sanction of rebate. Further, even if there is a lapse, the defect is curable & the same has been cured by set of the revised documents placed on the record. The lapse is a procedural one & we humbly

request that the same may please be condoned. For this, we rely on decision of the revisionary authority in case of (i) Barot Exports published in 2006 (203) ELT 321 (GOI), (ii) Non Ferrous Materials Technology Development Centre Vs. GOI 1994 (71) ELT 1081 (GOI) (iii) Krishna Filaments Ltd. Vs. GOI 2001 (131) ELT 726 (GOI) (iv) Akansha Metals Pvt. Ltd. Vs. GOI 2003(158) ELT 797 (GOI) (v) IOC Ltd. Vs. CCE Calcutta-II – 2004 (178) ELT 834 (Tri.) (vi) Harison Chemicals Vs. GOI 2006 (200) ELT 171 (GOI) (vii) CCE, Bhopal 2006 (205) ELT 1093 (GOI) (viii) Modern Process Printers Vs. GOI 2006 (204) ELT 632 (GOI).

4.9 We reiterate the documents Viz. ARE-1, S/B, B/L, BRC, Form H etc. Are linked to each other & need to be seen in this manner to arrive at a logical conclusion. The documents are in full compliance with the Notification No. 19/2004-CE(NT) dated 06.09.2004 therefore the rebate claims cannot be rejected. It is pertinent to point out that in the past, the rebate claims were made by the merchant exporters based on the same set of documents & the same were settled by the Maritime Commissioner's office.

4.10 Last but the least important is the fact that the revisionary authority, GOI in order No. 573-604/11-Cx dated 26.05.2011 have clearly accepted that the place of removal can be the factory or the port of export while determining the question of transaction value. Here in this case, the goods are sold to the manufacturer exporter at the factory gate & duty paid accordingly & rebate claimed. There is no discrepancy of whatsoever nature & the rebate cannot be recalled when exports of duty paid goods removed from the factory of Sohan Healthcare P. Ltd. Has taken place as certified by the relevant customs officials & that order is not challenged. Applicant also relied upon the below mentioned case laws and CBEC circular:-

- (i) 2008 (226) ELT 422 (Tri. Mum.)
- (ii) Circular issued from F.No. 224/37/2005-Cx.6 dated 24.12.2008.
- (iii) CCE Vs. Indian Oil Corporation Ltd. – 2004 (165) ELT 257 (SC)

5. The respondent department vide letter 14.12.2010 made the following submissions:-

5.1 Marking excise invoice for export is not only sufficient. It is rightly held by Commissioner(Appeals) in his findings that it is difficult to co-relate the goods removed from the factory with the export goods.

5.2 In this case, it is admitted fact that name of the consignee was hidden in the original documents submitted to the department including shipping bill.

5.3 It is admitted fact that the name of the consignee was hidden in the original documents submitted to the department, while seeking the claim. Hiding the consignee details can not be treated as procedural lapse and it is difficult to co-relate goods removed from the factory with the export goods.

5.4 Certificate of export issued by the Sales Tax department indicating the invoices will not be relevant and useful to make correlation between ARE-1s & export goods.

5.5 Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 prescribes details conditions and limitations to be fulfilled by a person claiming rebate. One of the conditions prescribed is that the excisable goods shall be exported after payment of duty directly from the factory of the manufacture. Which is fulfilled in the claimant's case.

5.6 Major grounds of appeals filed by the Department is non declaration of name and address of the consignee. Irrespective of the reason for non mentioning of the consignee details such as non mention coupled with clearance under self sealing procedure makes difficult to correlate of the goods cleared under ARE-1 with the goods exported under shipping bills. Certificate of export issued by the Sales Tax department indicating the invoices will not be relevant and useful to make correlation between ARE-1 & export goods. Rebate is the amount of duty paid on the excisable goods which are exported. Linkage between the goods cleared on payment of excise duty from the factory of the manufacturer and the export goods is a necessary criteria to sanction the rebate under Rule 18.

6. Personal hearing was scheduled in this case on 21.12.2012. Hearing was attended by Shri Rajiv Gupta, Consultant, Shri S. Chakkrawar, Director and Shri D. Hirolikar, Marketing Manager on behalf of the applicant who reiterated the grounds of Revision Application. Shri V. R. More, Superintendent attended hearing on behalf of respondent department and reiterated the submissions made in their written reply dated 14.12.2010

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government notes that there being no denial to the factual details of manner and form of clearances from the factory of manufacture with self sealing and under preparation of all the relevant statutory Export documents for the stated export goods as detailed above. The rebate claim of applicant were sanctioned by the original authority. However, Commissioner of Central Excise reviewed these orders on the ground that the applicant failed to follow the procedure prescribed in Notification No. 19/2004-CE (NT) in as much as the goods were cleared from factory under self sealing mentioning the name of consignee as (Indian) Merchant Exporter and not that of overseas buyer and buyer's name & address has intentionally been withheld/tempered with Shipping Bill and the nexus between goods cleared from factory and goods exported also could not be established. Department filed appeals before Commissioner (Appeals) who set aside the impugned Orders-in-Original and allowed the appeal of department. Now, applicant has filed this revision application on grounds mentioned in para (4) and (5) above.

9. Government notes that in the instant case, the applicant has not filled up all the columns of ARE-1 specifically the name and address overseas buyer as final consignee. He has exported the goods under self sealing procedure through merchant exporters. The applicant herein also followed procedure/ requirement of submission and getting counter signed the duplicate and triplicate copies of relevant ARE-1s. Under such circumstances, it is important to examine whether the goods cleared from factory has actually been exported. In the instant case the goods



Pharmaceutical Drug Met form HCL -Ch.H -2942 were cleared from factory vide individual Road Transport under stated Central Excise Invoices and ARE-1s. The weight mentioned in the said Central Excise invoices tallied with the details mentioned in AREs-1. Further, Shipping Bills also find mention of impugned ARE-1 Nos and the description, weight and other particulars of goods as given in ARE-1/Invoice which conforms to and tally with of Shipping Bills. The applicant is submitting that he has got the certification of the Customs (Preventive) officer on the back side of ARE-1 and there is correct co relatibility of impugned Shipping Bills further with relevant Bill of Lading and finally the B.R.C. There is a main objection that name of details of consignee is obliterated on export documents.

10. Government however notes that the impugned goods upon clearances from the factory of manufacture, moved to the JNPT Nhava Sheva Mumbai and got stuffed/sealed under Custom Supervision as per the container No.s and other details including description of goods as per ARE-1s/Invoices as mentioned in the relevant Shipping Bills/B.L. etc. Government also takes note of the Bank Realisation Certificates which in its 17 different columns also has all the co-relatable details as mentioned therein. Applicant has also produced the transport documents showing transportation of goods in particular manner from factory at Pune to the Port of Export. When all the above documents are put together and applicant's submitted ARE-1 wise details from the point of clearance of final exports vide co-related export documents systematically which are considered then the required nexus can be seen as connected. Government also considered the submission of the applicant that when goods were received at Customs station and when documents were presented before jurisdictional control Excise office nothing was objected to or noticed objectionable with respect to the details contained in the accompanying documents and the Customs officers were having all options to open for re-examination etc. at the time of exports before proper endorsements etc. The applicant is taking plea of "prevention of leakage of confidentiality of overseas buyer as only reason of leaving one column of consignee as blank or incomplete. However, applicant has submitted that this discrepancy stands rectified now by placing on record the revised set of documents received from M/s Euresian.

For situations as above, the observations to be kept in mind should be as per Hon'ble Supreme Court judgement in case of Sharif-Ud-Din, Abdul Gani [AIR-1980 SC (3403) & 203 (156) ELT (178) Bombay] that distinction between requirements of procedure and other declarations of compulsory nature and/or simple technical nature are to be judiciously done. What needs to be considered that a particular lapse on the part of applicant would be having what consequences and as to whether the same can be taken as otherwise verified/checked so as to avoid any undue benefits. In this case matter Government finds that all the statutory required documents were indeed properly prepared and the discrepancy of non mentioning of consignee details is resolved now by submitting the requisite details. The said consignee details as furnished now are to be verified at the level of original authority.

11. Government therefore sets-aside the impugned orders-in-appeal and remand the case matter back to original authority to sanction the rebate claim after verifying the correctness of consignee details as submitted now by the applicant. Government directs the applicant to submit said documents containing consignee details before original authority. A reasonable opportunity of hearing may be given to applicants.

12. The Revision Application stands disposed of in terms of above.

13. So, Ordered.

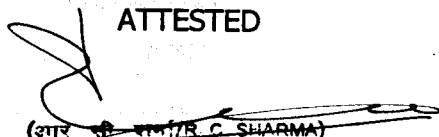


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Sohan Health Care Pvt. Ltd.  
D-30, MIDC, Kurkumbh,  
Tal-Daund Dist-Pune.

ATTESTED



(शारदा चं. शर्मा/R.C. SHARMA)  
उपायुक्त/Dy Commissioner,  
C.B.E.C.-OSD to Jt. Secy (R.A.),  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.),  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

Order No. 18-17/13-Cx dated 08-01-2013

Copy to:

1. The Commissioner of Central Excise, Pune-III, 41/A, ICE House, Sassoon Road, Opp. Vadia College, Pune – 411001.
2. The Commissioner (Appeals-III) Central Excise, Pune, F Wing, 3<sup>rd</sup> Floor, ICE House, Opp. Wadia College, Sassoon Road, Pune – 411001.
3. The Assistant Commissioner of Central Excise, Pune VII Division, ICE House, 41-A, Opp. Wadia College, Sassoon Road, Pune – 411001.
4. Shri Rajiv Gupta, C/o Professional Exim Consultants, A-1 Divyajot CHS Ltd., R.K. Singh Marg, off Old Nagardas Road, Andheri East, Mumbai -69
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy

  
(R.C. Sharma)

OSD -I (REVISION APPLICATION)

