



सत्यमेव जयते

**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. 195/258/14-RA | 2863

Date of Issue: 28.05.2021

ORDER NO. 194/2021-CX (WZ) /ASRA/Mumbai DATED 30.04.2021 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 Alembic Pharmaceuticals Ltd.
Alembic Road, Vadodara - 390003.

Respondent : Commissioner of CGST, Vadodara-I.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. DMN-EXCUS-000-APP-78-14-15 dated 12.06.2014 passed by the Commissioner (Appeals), Central Excise, Daman.

ORDER

This revision application is filed by M/s Alembic Pharmaceuticals Ltd., Alembic Road, Vadodara – 390003 (hereinafter referred to as “the applicant”) against the Order-in-Appeal No. DMN-EXCUS-000-APP-78-14-15 dated 12.06.2014 passed by the Commissioner (Appeals), Central Excise, Daman.

2. Brief facts of the case are that the applicant, a merchant exporter, had exported the excisable goods viz. ‘P & P Medicaments’ falling under Ch. 30 of the CETA, 1985 under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The impugned goods were manufactured by M/s Injectcare Prenterals Pvt. Ltd., Plot No. 130, Silvassa Road, GIDC, Vapi. The applicant claimed rebate of Rs. 32,784/- (Rupees Thirty Two Thousand Seven Hundred Eighty Four Only) being central excise duty paid on exported goods. The Rebate Sanctioning Authority while scrutinizing the impugned rebate claim noticed following discrepancies -

- a) Copy of packing list was not submitted.
- b) the description of goods and quantity to be exported, mentioned on the ARE-1 No. 422 dated 30.08.2012 was ‘PACTUM INJ. 4.5 GM (2200 Vials) whereas the goods exported under the shipping bill No. 7226594 dated 30.08.2013 was ‘PACTUM INJECTION / 30 ML. STERILE PIPERACILIN SODIUM AND TAZOBACTAM SOD FOR INJ. (ALEMLIN -T) (2000 Vials).

The Rebate Sanctioning Authority vide Order in Original No. Vapi-I/Rebate/346/2013-14 dated 27.02.2014 rejected the impugned rebate claim on the ground that the goods cleared for export had not been exported under the said shipping bill and hence the duty paid on said goods was not admissible as per Rule 18 of the Central Excise Rules, 2002.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Daman. The Appellate Authority vide Order in Appeal No. DMN-EXCUS-000-APP-78-14-15 dated 12.06.2014 dismissed the appeal and upheld the Order in Original. The

appellate authority while passing the impugned order in appeal observed that :-

- a) The submission of the packing list is not mandatory requirement for processing of the rebate claim, but in the case where there is contradiction in the description of goods in mandatory documents i.e. shipping bills, bill of lading, ARE-1 etc. there is nothing wrong in calling for the other related documents to ascertain the authenticity of the export.
- b) The applicant had not submitted any plausible explanation for difference in description and content before appellate authority.
- c) There is no denial that the description and content of goods as reflected in ARE-1 and in shipping bill are different.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 3.1 The minor variations were never brought to their notice at any stage. That had the so-called deficiencies / discrepancies brought to their attention, they would have clarified the same.
- 3.2 The appellate authority had held that there is no legal requirement to produce the mate receipt or packing list. However, still accepted it as a valid ground to deny rebate claim.
- 3.3 They are enclosing the copies of mate receipt and packing list which show the correct description of the product as 'Pactum Injection' to resolve the objection regarding variation in description of the product in the SB and BL.
- 3.4 The description of goods in the SB and BL are not different, contrary to what is alleged in the impugned order, which they crave to prove at the time of hearing.
- 3.5 As regards the difference in quantity shown in ARE-1 as compared to Shipping Bill, these goods were actually 'free samples' which did not have any commercially realizable

value per se. As such, these details were not mentioned in Shipping Bill, however, the fact remains that the duty stood paid on them and the same was also mentioned in the ARE-1.

- 3.6 The fact remain that the goods were duty paid and exported.
- 3.7 The decision in the case of M/s Kaizen Organics P. Ltd 2012(281) ELT 743 (GOI) is not comparable to the issue on hand since in the said case both descriptions were different and it could not have been proven that the same product as had suffered duty were exported.

4. A Personal hearing in the matter was granted on 11.04.2018, 10.10.2019, 20.11.2019, 11.01.2021, 15.01.2021, 25.01.2021 and 12.02.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant / department. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

6. 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.

7. The Government finds that there is variation in the description of the goods mentioned in various export documents. The description as per ARE-1 No. 422 dated 30.08.2013 is "Pactum 4.5 GM" and as per the shipping bill No. 7226594 dated 30.08.2013 it is "Pactum Injection / 30ML Sterile Piperacilin Sodium And Tazobactam SOD for INJ (Alemlin-T)".

7.1 The Government notes that the Paragraph 8.4 of Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been

specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

7.2 It is observed that the applicant have furnished the copies of Packing List / Mate Receipts in respect of impugned rebate claim along with the Revision Application. The applicant have submitted the copy of Packing List and Mater Receipt which show that the goods exported are 'Pactum Injection'. The corroborative evidence submitted by the applicant shows that the excisable goods exported were 'Pactum Injections'. Further, the batch number mentioned in the packing list tallies with that of shown in the Excise Invoice under which the goods were removed from the factory premises. The Government finds that the correlation of the goods removed from factory premises and exported can be carried out on the basis of these documents. However, these documents submitted along with Revision Application are not self attested. Therefore, it is opined that the same are required to be verified to determine its authenticity, validity and as to establish the fact that the goods cleared from the factory and exported goods are same. In view of above, the applicant is directed to submit the relevant BRCs in original to enable verification of the same to the original authority for consideration in accordance with provisions of law and passing appropriate order.

8. The Government notes that there is difference in the quantity of goods as shown in the ARE-1 and relevant Export documents. The quantity shown as per ARE-1 is 2200 vials whereas the quantity as per the shipping bill is 2000 vials. The applicant have explained that the difference in the quantity i.e. 200 vials were actually free samples which did not have any commercially realizable value per se. As such the details were not mentioned in the Shipping bills.

8.2 The Government finds that the packing list enclosed with the Revision Application shows details of the samples where in the quantity of free samples has been shown as 200 vials. However, it is also noted that the applicant have claimed the rebate of duty paid on these free samples.

8.3 In this regards, Government finds that in the case GOI Order Nos. 933-1124/2012-CX., dated 31-8-2012 reported in 2013 (288) E.L.T. 133 (G.O.I.) in the case of M/s Cadila Healthcare Ltd. wherein Government at para 11 of its order held as under:-

11. *Applicant has contended that rebate of duty paid cannot be denied on the goods supplied free as samples. The free sample has no commercial value as they are supplied free to the buyer and no foreign remittance is received. As per Condition 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 if the market price of the excisable goods at the time of exportation is less than amount of rebate claimed, the rebate will not be admissible since the goods are supplied free and therefore rebate on such goods is rightly denied under Rule 18 of Central Excise Rules, read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004. However, the amount paid as duty has to allowed in re-credited to the Cenvat credit account as the said amount cannot be retained by Government without any authority of law.*

8.4 Government also finds that in GOI Order No. 332/2014-CX, dated 25-9-2014 in Umedica Laboratories Pvt. Ltd. reported in 2015 (320) E.L.T. 657 (G.O.I.) Government observed as under.

- 9.1 *Government finds that the original authority also rejected the rebate claim of duty paid on free samples. Government observes that these samples were not meant for sale, so, they did not have any commercial value and no foreign remittances were to be received by the applicant. Government observes that the rebate/drawback etc. are export oriented schemes to neutralize the effect of the domestic duties on the exported goods to make them competitive in international market to earn more foreign exchange for the country.*
- 9.2 *As in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per records become nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of Condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.*

8.5 Government also observes that Hon'ble Supreme Court has also held in the case of M/s. Belapur Sugar and Allied Industries Ltd. v. CCE - 1999

(108) E.L.T. 9 (S.C.) that even if duty paid under ignorance of law or otherwise, the rebate cannot be refused since party has paid the duty. Further, Hon'ble Apex Court has held that if the duty paid shown to be not leviable or entitled for rebate, the Revenue has to refund, adjust, credit such amount to the assessee as the case may be.

8.6 Government by applying the ratio of aforesaid judgements to the instant applications holds that as in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per records becomes nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

8.7 Government further holds that the amount of duty paid on free samples cannot be retained by Government and it has to be returned to applicant in the manner in which it was paid. Accordingly, such duty is required to be returned to the applicants. As such the amount of duty paid on free samples may be re-credited in the applicant's Cenvat credit account.

8.8 From the forgoing para, it is held that the difference in the quantity i.e. 200 vials (2200 vials as per ARE-1 and 2000 vials as per SB) proven to be free samples, the rejection of the rebate claim in toto is not just and proper and the same should be restricted to 2000 vials for the reasons discussed hereabove. The case is therefore remanded back for processing on the above grounds.

9. In view of above, the Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions in this order and that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. The applicant shall submit the requisite documents as discussed above within eight weeks from the

receipt of this order to the Original Authority for processing the claims afresh on above guidelines.

10. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. DMN-EXCUS-000-APP-78-14-15 dated 12.06.2014 and remands the case to the original adjudicating authority as ordered supra.

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


30/04/21
(SHRAWAN KUMAR)

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

ORDER No. 194/2020-CX (WZ) /ASRA/Mumbai DATED 30.04.2021

To,

M/s Alembic Pharmaceuticals Ltd.
Alembic Road, Vadodara - 390003.

Copy to:

1. The Commissioner of CGST, Vadodara-I, Central Excise Building, Race Course Circle, Vadodara - 390007(Gujarat).
2. The Commissioner of CGST, Vadodara Appeals, Central Excise Building, 6th floor, Race Course Circle, Vadodara - 390007(Gujarat).
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
- ✓ 5. Spare Copy.