



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

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F. NO. 195/259/14-RA | 2858

Date of Issue: 28.05.2021

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ORDER NO. 195 /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-61-14-15 dated 29.05.2014 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-61-14-15 dated 29.05.2014 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. 2,25,112/- (Rupees Two Lakh Twenty Five Thousand One Hundred Twelve 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 Mate Receipt was not submitted.
- b) Copy of packing list was not submitted.
- c) The description of goods mentioned on Shipping Bill does not tally with the Bill of Lading.

The Rebate Sanctioning Authority vide letter dated 08.10.2013 requested to clarify the above discrepancies. The applicant did not submit their reply.

The Rebate Sanctioning Authority vide Order in Original No. Vapi-I/Rebate/318/2013-14 dated 16.12.2013 rejected the impugned rebate claim on the ground that in the absence of reply to the letter dated 08.10.2013, the genuineness of export cannot be established beyond doubt.

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-61-14-15 dated 29.05.2014 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 / mate receipt 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 did not submit any evidence to prove that the goods mentioned in the Shipping Bill and Bill of Lading are not different.
- c) As regards the claim pertaining to ARE-1 No. 910 dated 04.02.2013, M/s Alembic Ltd. is the exporter as per ARE-1 and the claim had been filed by M/s Alembic Ltd. However, as per shipping bill No. 3754594 dated 31.01.2013 and other export documents like Bill of Lading etc. the exporter is M/s Alembic Pharmaceuticals Ltd.

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 While mate receipt and packing list are not mandatory for processing rebate claim, due to variation in description of product it was essential to be produced as corroborative evidence. They are enclosing the copies of mate receipt and packing list which show the correct description of the product as 'Ampicilin 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. The clerical errors in mentioning name of exporter and manufacturer in such documents cannot be a sole ground to deny rebate, especially when only one person has claimed rebate. That whether Alembic Ltd. and Alembic Pharmaceutical Ltd. is one and the same is also not of any consequence. Due to amalgamation / merger, the name of the appellant had undergone change and considering past practice, it might have happened that due to clerical and typographical error, the ARE-1 mentioned the name of M/s Alembic Ltd.
- 3.7 The fact remains that goods were duty paid and exported. M/s Alembic Ltd. had not claimed any rebate. In fact, M/s Alembic Ltd. had given declaration to this effect, which would be produced at the time of hearing, to the effect that the goods were not exported by them but by the present applicant itself and that M/s Alembic Ltd. had not claimed any rebate of such duty in dispute.
- 3.8 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.

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. 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. In the instant case, the adjudicating authority had called for the documents viz. Packing List and Mate Receipts in respect of exported goods to resolve the issue related to the contradiction in the description of goods in mandatory documents i.e. shipping bills, bill of lading, ARE-1 etc. The Government opines that the observation of the Appellate Authority in this regards that ***'there is nothing wrong in calling for the other related documents to ascertain the authenticity of the export'*** rational and further holds that , being beneficiary of the export incentive scheme, it is obligatory on the part of the applicant to provide/ furnish any corroborative documents, though not mandatory, called for by the Rebate Sanctioning Authority to satisfy himself about two requirements as discussed in para 6 supra.

7.2 At the same time, the Government, also, holds that the non-production of the Packing List / Mate Receipt is a matter of procedure and non-submission of these documents by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods. As such, it is held that the rejection of the rebate claims on this context alone is not just and proper.

7.3 Further, 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. 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 the claim pertaining to ARE-1 No. 910 dated 04.02.2013, M/s Alembic Ltd. is the exporter as per ARE-1 and the claim had been filed by M/s Alembic Ltd. However, as per shipping bill No. 3754594 dated 31.01.2013 and other export documents like Bill of Lading etc. the exporter is M/s Alembic Pharmaceuticals Ltd. The applicant in this regard have submitted that the error is typographical in nature and due to amalgamation / merger, the name of the applicant had undergone change and considering the past practice, it might have happened. The Government notes the minor variation in the name of both the companies which is resultant due to merger. The Government also observes that the explanation of the applicant for such variation is plausible and there is reason to accede the same. The applicant is directed to submit the merger documents / agreement to clarify the discrepancy noticed by the rebate sanctioning authority to enable him to sanction the rebate to the rightful claimant.

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 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-61-14-15 dated 29.05.2014 and remands the case to the original adjudicating authority as ordered supra.

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

  
30/4/21  
(SHRAWAN KUMAR)

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

ORDER No. 195/2020-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, 6<sup>th</sup> floor, Race Course Circle, Vadodara - 390007(Gujarat).
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.