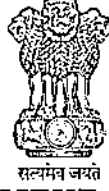


SPEED POST
REGISTERED POST



**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, Cuffe Parade,
Mumbai- 400 005**

F. NO. 195/960-961/2013

/ 797

Date of Issue: 21.02.2022

ORDER NO. ¹⁹⁷⁻¹⁹⁸ /2022-CX (WZ) /ASRA/Mumbai DATED 18.02.2022 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 Glow Pharma Pvt. Ltd.
101, B-Wing, Prathamesh Apartment,
Azad Road, Gundavali,
Andheri (E), Mumbai 400 069.

Respondent : Commissioner of Central Excise & CGST,
Bhiwandi Commissionerate.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
BR/(76-77)Th 1/2013 dated 28.01.2013 passed by the
Commissioner (Appeals) - I, Central Excise, Mumbai
Zone-I.

ORDER

This Revision Application has been filed by M/s Glow Pharma Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. BR (76-77) Th 1/2013 dated 28.01.2013 passed by the Commissioner (Appeals) - I, Central Excise, Mumbai Zone - I. The said Order-in-Appeal decided appeals against the Orders-in-Original Nos.923 & 922/06-07 dated 03.01.2007 passed by the Assistant Commissioner, Central Excise, Kalyan - I Division, Thane - I Commissionerate.

2. Brief facts of the case are that M/s Glow Pharma, Bhiwandi is a merchant exporter and had filed rebate claims with respect to 'Bulk Drugs' exported by them. The applicant was a Registered Dealer and the said rebate claims were filed under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE (NT) dated 06.09.2004.

3. The Rebate Sanctioning Officer vide Orders-in-Original, both dated 03.01.2007, rejected the claims on the grounds that the applicant had incorrectly used Form ARE - 2 instead of ARE - 1 while clearing their goods for export and also for the reason that the debits made in the RG23D register cannot be considered as payment of duty, as a Dealer was only supposed to pass on Cenvat credit and not use it to pay Central Excise duty.

4. Aggrieved, the applicant preferred appeals against the above Orders-in-Original before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 28.01.2013. The Commissioner (Appeals) found that the decision of the original sanctioning authority was correct on both counts and upheld the Orders-in-Original and rejected the appeals filed by the applicant.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 28.01.2013 on the following grounds, along with an application seeking condonation of the delay in filing the same:-

(a) They submitted that they had received the said Order-in-Appeal on 29.05.2013 and were hence required to file this application before 24.08.2013; that however, they had lost the appeal papers while travelling and had tried retrieving copies of the same from the office of the Commissioner (Appeals); and had finally got the same from the office of the Assistant Commissioner; that the above circumstances has led to the delay of 81 days in filing the present Revision Application. They prayed that the same may be condoned and the application be heard on merit.

(b) They submitted that they had been advised to prepare and issue ARE-2 for the goods procured from the market and exported and hence they done the same; that the same was a procedural lapse and condonable as the export of goods and the payment of duty on the same was not in dispute;

(c) The Commissioner (A) had erred in observing that a Dealer could only pass on the credit to the buyer of goods and same could not be treated as duty; that the credit of duty paid on the purchase of goods was nothing but duty paid while purchase and that the said duty was paid on clearance of goods on sale basis; and that the duty paid while purchasing the goods had been paid on sale of goods by adjustment in the records maintained; and that they had therefore claimed the rebate of duty paid on sale/export which had suffered duty.

(d) They submitted that they were a reputed Government recognized export house and an ISO-9001-2000 company engaged in the export of pharmaceutical products; that they get goods manufactured on loan basis from manufacturers and dealers; that they were registered with Central Excise as a Dealer and procured pharmaceutical products/bulk drugs for export without payment of duty; that the rebate claim was filed on receipt of

proof of export; that they place reliance on Board Circular No.487/53/99 dated 30.09.1999 to submit that rebate be sanctioned despite procedural irregularities. They relied upon the following judgments in support of their case:-

- (i) Thermax Pvt. Ltd. [1992 (61)ELT352 (SC)]
- (ii) J. K. Synthetics Ltd. [1996 (87) ELT 582 (S.C.)]
- (iii) Garg Tex-O-Fab P. Ltd. [2011 (271) ELT 449 (GOI)]
- (iv) Akansha Metals P. Ltd. [2003 (158) ELT 797 (GOI)]
- (v) Krishna Filaments [2001 (131) ELT 726 (GOI)]

In light of the above, the applicant prayed for the '*Order-in-Original*' to be set aside and their appeal be allowed.

6. Personal hearing in the matter was granted to the applicant on 09.04.2018, 08.08.2018, 27.08.2019, 03.12.2019, 10.02.2021, 24.02.2021, 17.03.2021 and 24.03.2021; however, no one appeared for the same. Sufficient opportunity having being given to the applicant to be heard in person, the case is now taken up for decision.

7. Government has carefully gone through the relevant case records available in case files, the written submissions, the said Orders-in-Original and the impugned Order-in-Appeal dated 28.01.2013.

8. Government finds that the applicant received the impugned Order-in-Appeal on 29.05.2013 and had filed this application on 26.11.2013. Government finds that the same has been filed within the time limit which is condonable by the Revision Authority. Government, in light of the reasons cited by the applicant and the larger interest of justice, condones the delay in filing of the present application and takes up the same for decision on merits.

9. Government notes that the applicant is a merchant exporter and a Dealer registered with Central Excise. It is their case that duty paid on the goods exported through the RG23D register and exported under the cover of Form ARE-2 should be allowed as rebate to them. The original sanctioning authority and the Commissioner (A) found that the applicant had incorrectly used Form ARE-2 instead of ARE-1 and also that the applicant as a Dealer was only allowed to pass on Cenvat credit and not use the same to pay Central Excise duty and had hence found the rebate claims filed by the applicant to be inadmissible.

10. Government finds that the irregularity of the applicant having used Form ARE-2 instead of Form ARE-1 with respect to the export consignments is merely a procedural lapse. Government finds that neither the original sanctioning authority nor the Commissioner (A) has recorded that such incorrect use led to withholding of any information or details that were necessary to establish that the goods in question were exported. Thus, Government holds the said irregularity to be a procedural lapse and condones the same.

11. As regards the purported payment of duty on the exported goods through debits in the RG23D register, Government notes that the payment of duty on goods has to be done by a manufacturer in accordance with Section 4 of the Central Excise Act, 1944 and the rebate of such quantum of duty paid is allowed to the exporter of such goods. Government notes that in the present case, the original sanctioning authority had called for the details of the manufacturers of the goods that were exported, however, the applicant failed to produce the same. The said details were not produced before the Commissioner (A) or during the present proceeding. In the absence of any evidence to indicate the quantum of duty paid by the manufacturer on the goods that were exported, Government finds the claim of the applicant, that the adjustment done by them in the RG23D register towards the goods exported should be treated as duty paid on the same, to be unacceptable.

Government notes that the Commissioner (A), in the given circumstances, has correctly held that the applicant would be ineligible to the rebate claimed by them. In light of the above, Government holds that the debits made by the applicant in their RG23D register cannot be treated as duty payment and hence no rebate of the same can be allowed.

12. The Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ¹⁹⁷⁻¹⁹⁸ /2022-CX (WZ) /ASRA/Mumbai dated 18.02.2022

To,

M/s Glow Pharma Pvt. Ltd.,
101, B-Wing, Prathamesh Apartment,
Azad Road, Gundavali,
Andheri (E), Mumbai 400 069.

14E, Jai Mata Di Compound,
Village Kalher, Thane Bhivandi Road,
Bhiwandi, Thane - 401208.

Copy to:

1. Commissioner of Central Excise & CGST, Bhiwandi Commissionerate, 11th /12th floor, Lotus Infotech Centre, Station Road, Parel (E), Mumbai 400 012.
2. The Commissioner (Appeals - I), Central Excise, Mumbai Zone - I.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board