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SPEED 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. 195/145/WZ/2018-RA/895 Date of Issue: 01.03.2022

ORDER NO. 199 /2022-CX (WZ)/ASRA/MUMBAI DATED 25.02.2022
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. Lupin Limited

Respondent : Commissioner of CGST & Central Excise, Belapur.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
MKK/173/RGD APP/2018-19 dated 29.06.2018 passed by
Commissioner, Central Tax, Central Excise & Service Tax
(Appeals), Raigad.

ORDER

This Revision Application is filed by M/s. Lupin Limited, 7th Floor, Kalpataru Inspire, off Western Express highway, Santacruz East, Mumbai - 400 055 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. MKK/173/RGD APP/2018-19 dated 29.06.2018 passed by Commissioner, Central Tax, Central Excise & Service Tax (Appeals), Raigad.

2. Brief facts of the case are that the Applicant, a manufacturer exporter, had filed two rebate claims on 29.11.2017 totally amounting to Rs. 33,78,106/- under Notification No.19/2004 CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 as detailed hereunder:

Name of the product / Ch. H. No	RC No./ date	ARE 1 No./date	Amount claimed (in Rs.)	Shipping Bill No./ date	Bill of Lading No. /date
Rifampin Isoniazid Tablets 30049057	18310/ 29.11.17	475/ 23.03.17	2151157	8999049/ 29.09.17	INBOM60 3255A/ 17.10.17
	18311/ 29.11.17	502/ 31.03.17	1226949	8999026/ 29.09.17	

The rebate sanctioning authority, observed that the goods were not Shipped within the period of six months as stipulated under Notification No.19/2004-CX (N.T) dated 06.09.2004 and therefore rejected the claims vide Order-in-Original No. 1505/TDB/AC/17-18/Belapur dated 09.03.2018. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) out of the two consignments, the export of No.502 dated 31.03.2017) was well within six months vide shipping bill no. 29.09.2017 as mentioned in the reply to the SCN. But both the rebate authority and appellate authority failed to observe the same

and rejected the rebate and appeal on a wrong notion. Even in case of the second consignment the delay was only for a seven days, that too due to genuine reasons as explained in our SCN reply and first level appeal. That too even when the appellant had already applied well in time for an extension of time vide letter dated 12.09.2017 as mentioned in the SCN reply and first level appeal. Though the Let Export date is 04.10.2017, the same cannot be considered for this limitation clause because this Let Export happens based on the availability of berth/ship which is totally beyond the control of the exporter. So, the date of Shipping Bill has to be considered for this limitation. As such the OIO dated 09.03.2018 and the impugned OIA dated 29.06.2018 deserve to be set aside based on the above facts.

(b) the export of final product is not under doubt / dispute. Neither the show cause notice nor the Ld. Commissioner (Appeals) dispute the export of the final products. Once this is the undisputed position, there cannot and shall not be denial of rebate of duty on exported final products. The appellants submit that denial of benefit of rebate on exported final products on account of minor and unintentional delay on the part of the applicants should not frustrate the object of export.

(c) the applicants had received supply order pursuant to World Health Organization ('WHO')/Global Drug Facility ('GDF') tender for tuberculosis ('TB') products to be supplied to TB programmes run by Governments in their respective countries. These orders are funded by donor agencies like Global Fund, World Bank etc. The process is that the products and quantities are divided between various suppliers/manufacturers. These are ex-works orders and the goods/products from various suppliers are collected by freight forwarders appointed by GDF and then consolidated at their end. This consolidated consignment is then dispatched to the respective country by them. In the present case i.e. supply of goods to Pakistan,

once the shipment is ready the necessary documents are sent to Pakistan for import waiver to ship the consignment. Obtaining these waivers takes time in as much as for any pharma goods not registered in the country of import and coming from India the approval for waiver has to be taken from the highest authority in Pakistan which is time consuming. Considering the above facts and circumstances, there has been a minor delay in shipping the consignment by the logistics agent to Pakistan. From the above, it can be seen that the export was handled by the agent appointed by GDF and the delay was due to the prolonged time requirements for documentations with the Pakistan Government. The applicant has explained the reason of delay. The same was unintentional, bonafide and completely beyond the control of the applicant.

(d) it is a trite law that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. This view has been taken in:

- i. Alfa Garments vs. Collector of Central Excise 1996 (86) ELT 600
- ii. Birla VXL vs. Collector of Central Excise- 1998 (99) ELT 387

In the light of the above submissions, the applicant prayed to set aside the impugned order, direct the department to grant rebate or pass any other order which may deem fit in the facts and circumstances of the case.

4. Personal hearing in the case was fixed for 28.10.2021. Shri Rohit Bajaj, General Manager (Indirect Tax), attended the online hearing and submitted that in one shipping bill, export happened within six months, in

second case there was delay of 7 days in which they had filed a request letter with Commissioner for extension. He requested to allow the claim.

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. Government observes that the issue involved is whether the one of the impugned exports was carried out within six months of its clearance from the factory as required under Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 issued under rule 18 of the Central Excise Rules, 2002 and whether this condition is condonable?

7.1 Government observes that the relevant condition mentioned at para 2(b) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 reads as under:

(2) Conditions and limitations: -

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

7.2 Government observes that the applicant has claimed that out of the two export consignments, the export under ARE-1 No.502 dated 31.03.2017 was effected well within six months as evident from its shipping bill which is dated 29.09.2017. However, Government observes that, as per Section 11B of the Central Excise Act, 1944, relevant date for export has been defined as:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India,

As per section 2(37) read with section 50 of the Customs Act, 1962, a shipping bill means:

Section 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export³ [in such form and manner as maybe prescribed]:

Thus, shipping bill is a procedural document initiating the process of export and hence date of shipping bill cannot be considered as the date of export. The date in Bill of Lading, a legal document issued by a carrier to a shipper that details the type, quantity, and destination of the goods being carried, is just before ship is to leave, hence quite near to the date of shipment. In the instant case the date of Bill of Lading being 17.10.2017, the goods cleared under ARE-1 No.502 dated 31.03.2017 were definitely not exported within the stipulated six months.

7.3 Government observes that the applicant has relied upon a letter dated 12.09.2017 showing to have applied with the Superintendent, Aurangabad requesting for an extension of time for another three months to export the impugned consignments. However, the status of this application has not been revealed by the applicant in their written/oral submission placed before adjudicating/appellant authorities and even before the undersigned. Further, the competent authority for extension of time was Commissioner. Therefore, request for extension of time, if any, was required to be filed before the Commissioner.

7.4 Government observes that the period of six months from the date of impugned ARE-1s was lapsing in September 2017 hence the extension sought was till December 2017, however, before that the shipment of exports was effected in October 2017. Government notes that Section 11B allows time till expiry of one year from the date of shipment, for filing an application for rebate claim. Thus, in the instant matter, the applicant had time till October 2018 to file the impugned rebate claims. However, the applicant, instead of complying with the entire stipulated requirements, including an extension letter from the jurisdictional Commissioner of Central Excise, chose to file incomplete rebate claims in November 2017.

8.1 Government finds that the contention of the applicant that it is a trite law that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place cannot be accepted in the instant matter. As per Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004, rebate of the whole of the duty paid on all excisable goods exported to any country is to be granted subject to specified conditions, limitations and procedures. Rule 18 of the Central Excise Rules, 2002, whereunder said Notification is issued, also specifies it:

***Rebate of duty.** — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.*

Thus, a specified condition is required to be mandatorily complied with and its non-adherence cannot be condoned as a procedural lapse.

8.2 Government finds the various case laws quoted by the applicant are non-applicable in the instant matter. On the contrary, Government has in its many orders in the past, including the ones quoted by the adjudicating

and appellant authorities, emphasized on compliance of stipulated conditions before filing a rebate claim.

9. In view of the findings recorded above, Government upholds the Order-in-Appeal No. MKK/173/RGD APP/2018-19 passed by the Commissioner, Central Tax, Central Excise & Service Tax (Appeals), Raigad and rejects the impugned revision application filed by the applicant.

10. The Revision Application is disposed of on the above terms.


25/2/22

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

ORDER No. 199 /2022-CX (WZ)/ASRA/Mumbai dated 25.02.2022

To,
Lupin Limited,
7th Floor, Kalpataru Inspire,
off Western Express highway,
Santacruz East,
Mumbai - 400 055.

Copy to:

1. Commissioner of CGST, Belapur,
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai - 400 614.

2. ~~Sr. P.S. to AS (RA), Mumbai~~
3. Guard file
4. Notice Board.