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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.198/88/2013-RA /1016 Date of Issue: 23/07/2018

ORDER NO. 201 /2018-CX (WZ)/ASRA/MUMBAI DATED 25-06-2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise & Service Tax, LTU, Mumbai

Respondent : M/s Glenmark Pharmaceuticals Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BPS/62-81/LTU/MUM/2013 dated 16.05.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai.

ORDER

This revision application is filed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BPS/62-81/LTU/MUM/2013 dated 16.05.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai.

2. The issue in brief is that the respondent, M/s Glenmark Pharmaceuticals Ltd are engaged in the manufacture of Pharmaceutical Products falling under Chapter 30 of the Central Excise Tariff Act, 1985 having Central Excise Registration under LTU, Mumbai. Most of the goods manufactured and cleared by them are exported on payment of duty. Subsequently, they filed rebate claims thereon, in terms of the Notification No. 19/2004 C.E.(N.T.) dated 06.09.2004, issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 in respect of the excise goods exported on payment of duty against various ARE 1s. On receipt of subject rebate claims, the respondent was issued "Deficiency Memos" asking them clarification as to why the rebate claims pertaining to goods cleared after a period of six months of their factory clearances should not be rejected. After receiving the clarification from the claimant, the Deputy Commissioner, LTU, Mumbai passed the Order-in-Original, sanctioning the rebate claims partly and rejecting the balance rebate claims, as shown in the respective column of the table below:

Sl. No.	Order-in-Original No.	Date	Amount of Rebate Sanctioned (Rs)	Amount of Rebate Rejected (Rs)
1	LTU/MUM/CX/GLT-4/R-324/2012	18.01.2013	425174	96008
2	LTU/MUM/CX/GLT-4/R-329/2012	18.01.2013	279016	148772
3	LTU/MUM/CX/GLT-4/R-330/2012	18.01.2013	253692	5007
4	LTU/MUM/CX/GLT-4/R-332/2012	11.01.2013	367096	2574

5	LTU/MUM/CX/GLT-4/R-333/2012	21.01.2013	347392	2137
6	LTU/MUM/CX/GLT-4/R-334/2012	21.01.2013	401116	95109
7	LTU/MUM/CX/GLT-4/R-335/2012	21.01.2013	409249	89888
8	LTU/MUM/CX/GLT-4/R-336/2012	21.01.2013	279900	72525
9	LTU/MUM/CX/GLT-4/R-362/2012	24.01.2013	487891	3777
10	LTU/MUM/CX/GLT-4/R-363/2012	24.01.2013	490997	8682
11	LTU/MUM/CX/GLT-4/R-366/2012	24.01.2013	344030	18693
12	LTU/MUM/CX/GLT-4/R-367/2012	24.01.2013	408741	35818
13	LTU/MUM/CX/GLT-4/R-369/2012	24.01.2013	342228	152302
14	LTU/MUM/CX/GLT-4/R-371/2012	24.01.2013	128030	370182
15	LTU/MUM/CX/GLT-4/R-377/2012	24.01.2013	562519	27511
16	LTU/MUM/CX/GLT-4/R-387/2012	31.01.2013	369004	65866
17	LTU/MUM/CX/GLT-4/R-389/2012	31.01.2013	2835659	47747
18	LTU/MUM/CX/GLT-4/R-374/2012	24.01.2013	560272	5425
19	LTU/MUM/CX/GLT-4/R-375/2012	24.01.2013	693934	2523
20	LTU/MUM/CX/GLT-4/R-376/2012	24.01.2013	855440	190363
		TOTAL	**10841380**	**1440909**

3. Being aggrieved, the respondent filed appeal before the Commissioner (Appeals), LTU Mumbai. The Commissioner (Appeals), LTU Mumbai vide impugned Order-in-Appeal No. BPS/62-81/LTU/MUM/2013 dated 16.05. 2013 allowed the appeal filed by the respondent with all consequential relief interalia holding the Adjudicating Authority ought to have allowed in impugned Orders-in-Originals as the same could not have been denied to them for minor procedural infractions and held that these rebate claims are admissible to them and it may be sanctioned forthwith subject to verification of relevant export documents along with interest under Section 11BB ibid.

4. Being aggrieved, the Department filed aforementioned Revision Application against the impugned Order in Appeal on following grounds:

4.1 The Commissioner (Appeals) in the finding at Para 8 of the order mentioned that the issue involved in the subject appeals has already been dealt with in detail while deciding the claimant's earlier appeals by him vide Order-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012 (issued on 27.12.2012 vide F. No. LTU/MUM/C(A)/74-77/2012/P) and further

mentioned that he was inclined to stick to his earlier findings on the captioned issue recorded in his earlier O-in-A and by following the same reasoning held that the claimant was entitled to the rebate. The Commissioner (Appeals), instead of citing his earlier O-in-A dated 14.12.2012 in his findings for deciding the appeal, should have passed speaking order for deciding the present appeal filed the claimant. The Department have already filed Revision Application (F.No. LTU/MUM/CX/Review/ Glenmark/367/2012 dated 22.03.2013) against the Commissioner (Appeals), LTU Mumbai, Order-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012.

4.2 The claimant had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims. The rebate sanctioning authority disallowed the rebate amount of duty the details as shown in Para 2 above. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in Para 8 of the impugned order by the Commissioner(Appeals) that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory. The Commissioner (Appeals), in his earlier Order-in-Appeal No. BPS/136-139/LTU/ MUM/ 2012 dated 14.12.2012 observed that :

"...Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or the fundamental requirement for grant of rebate is manufacture and subsequent export of excisable goods. As long as this requirement is met, other procedural deviations cannot be condoned. Once the fact is established that the duty paid excisable goods cleared from the place of its manufacture for export are actually

exported, the failure to observe the procedural norms, if any, can be considered for waiver....."

and relied upon the case if in RE: Alcon Biosciences Pvt Ltd.- 2012 (281) E.L.T. 732 (G.O.I). However, the above case is not in consonance with the subject issue and hence appears to be not applicable.

Further, the Commissioner (Appeals) in his earlier Order-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012 relied upon the judgement in the case of HPCL Vs Collector of C.Ex-1995 (77) ELT 256 (SC) in Para 11 of the said order which is also not applicable in the instant case and is misplaced as it refers to the interpretation of duty liability in respect of export under Rule 12 and Rule 13 of Central Excise Rules 2002 and common procedure provided therein and not speaks about any relaxation in following the procedure.

Under Rule 18 of the Central Excise Rules, 2002, the Central Government has issued a Notification No. 19/2004-CE (NT) dated 06.09.2004 prescribing the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that, the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. Thus his mandatory requirement is not fulfilled by the claimant.

4.3 the claimant has failed to fulfill the condition by not getting the requirement permission from the jurisdictional Commissioner of Central Excise for exporting the goods beyond a period of six month, hence the order passed by the adjudicating authority rejecting rebate claims to that extent is correct as this is a substantial/ mandatory requirement. The Revisionary Authority

in RE : Ramlaks Exports Pvt Ltd. – 2011 (272) ELT 632 GOI vide Para 9 and Para 10 of the Order held as under :

> *"9. Government further observes that as per condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.) dated 6.9.04 "the 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."*
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> *"10. As the applicant has failed to fulfill the condition by not getting the required permission from the jurisdictional Commissioner Central Excise for exporting the goods beyond a period of six months, so rebate claims cannot be sanctioned as this is a substantial/ mandatory requirement. The case laws cited by applicant are not applicable in this case as it is not a case on only procedure lapses. Since the Commissioner of Central Excise has not granted extension of six months ime period for export of goods, the mandatory requirement of exported goods within 6 months from the date on which good were cleared from factory of manufacture is not fulfilled."*

4.4 The claimant had failed to fulfill the condition No. 2(b) of Notification No. 19/2004-CE (NT) dated 06.09.2004 and by not getting the required permission from the Commissioner for exporting the goods beyond a period of six months and thus the mandatory requirement is not fulfilled. Hence the order of the Commissioner (Appeals) is not correct, proper and legal

4.5 That the said Order-n-Appeal allowing amount of rebate claim of Rs. 14,40,909/- relating to their excisable goods on account of delay in export of goods beyond six months period from the date of removal of the excisable goods from the factory, be set aside and suitable orders may issued considering the above points.

5. A personal hearing in the case was held on 15.01.2018. No one was present from the applicant Department. Shri Mangesh Chaudhary, Manager and Shri R.M. Patkar, Consultant, appeared on behalf of the respondent. The respondent reiterated the order of Commissioner (Appeals) and also submitted a written submission. In view of the submission it was pleaded that the Order-in-Appeal be upheld and the revision application be dismissed.

6. The Respondent in their written submission filed on the date of hearing submitted that

6.1 they reiterate submissions made by them in one of the appeal memorandum dated 28.03.2013 filed by them wherein part rebate claim was denied by the original adjudicating authority. The said appeal memorandum may be treated as common for the appeal preferred by the Department to this office against various Order-in-Originals.

6.2 the present rebate of duty is being now contested by the Department only on one ground that the good were not exported within six months of their clearances from factory.

6.3 the original adjudicating authority has partly allowed their rebate claims and partly rejected without granting them a personal hearing before adjudicating the claims. There are plethora of judicial pronouncements which needs no further elaborating on the fundamental rights of granting Personal Hearing and hence on this alone, the rejection of rebate claims were not legal.

6.4 both Notification No. 19/2004-CE (NT) dated 06.09.2004 read with Rule 18 of CER, 2002 and Notification No. 42/2001-CE (NT) dated 26.06.2001 read with Rule 19 of CER, 2002 prescribed six month period of exportation of goods. The Rules 18 & 19 of CER, 2002 are pari materia with erstwhile Rules 12

& 13 of CER, 1994. The Department in their present Appeal at Para II has averred that the Supreme Court's decision in the case of HPCL Vs Collector is not applicable in the instant case as it refers to interpretation of Rule 12 & 13 of CER, 2002. Such averment as made by the Department is totally fallacious and cannot be accepted accordingly. As a result, the reliance on few judgments of theirs are on all fours in the present issue. The cases which are most pertinent to the present issue on hand have been decided by different Benches of Tribunal and the same are binding on the assessee as well as on Department Officials too.

6.5 The reliance of the Department in the case of Ramlaks Exports Pvt Ltd. has been decided by the GOI which is subordinate to High Courts of India and Apex Court too.

6.6 their reliance on few cases being most relevant in the instant case though were related to goods exported later than 6 months without payment of duty: the same will be applicable to goods exported later than 6 months on payment of duty. And that the decision of higher authorities are binding on the lower authorities and the reliance made by the Department has no legal sanctity.

6.7 they rely upon a decision of Kosmos Healthcare Pvt. Ltd – 2013(297) ELT 346 (Cal) wherein no extension of time for exportation was made by the assessee and for this reason alone, the Commissioner has granted them the rebate of duty.

6.8 the appeal cannot be decided by the jurisdiction of Joint Secretary level officer equal to Commissioner. The present appeal have been preferred by the Deputy Commissioner, LTU, Mumbai against Order-in-Appeals as per the authorization given by the Commissioner, LTU, Mumbai hence the present appeal case should not be adjudicated. In this they relied on the

decision of Hon'ble High Court of Punjab & Haryana in the case of NVR Forgings Vs UOI – 2016 (335) ELT 679 (P&H).

6.9 they requested to grant them the rebate of duty and dismiss the appeal filed by the Department.

7. 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.

8. As regards applicant's contention at para 6.8 above, Government observes that the Supreme Court Bench dismissed the SLP filed by Union of India against the Judgment of Punjab & Haryana High Court [Union of India v. NVR Forgings - 2017 (348) E.L.T. A82 (S.C.)]. Consequently, Ministry of Finance, Department of Revenue, have upgraded the post of Revisionary Authority as Principal Commissioner (Revision Application) and Ex-officio Additional Secretary to the Government of India, Delhi and Mumbai and accordingly Principal Commissioner (Revision Application) and Ex-officio Additional Secretary to the Government of India, Mumbai is a competent Authority to adjudicate the present Revision Application and proceeds to decide the same.

9. On perusal of records, Government observes that the respondent had filed rebate claims of duty totally amounting to Rs.1,22,82,289/- in respect of goods exported by them, out of which rebate amounting to Rs. 1,08,41,380/- was sanctioned and rebate amounting to Rs. 14,40,909/- was rejected by the lower authority on the grounds that the excisable goods were not exported within the period of 6 months in terms of Rule 18 of CER, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 and condition 1.1(iii) of Part 1 of Chapter 8 of Central Excise Law Manual.

10. Government further observes that the respondent had cleared the excisable goods from the factory of manufacture and exported the same after

six months. Thereafter, they filed rebate claims. The rebate sanctioning authority disallowed the rebate amount of duty the details as shown in Para 2 above. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in Para 8 of the impugned order by the Commissioner(Appeals) that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory.

11. Government notes that there are many of Government of India Orders wherein it is held that limitation condition of six months for export and requirement of permission by authority for extension of time, is statutory and mandatory condition under Notification No. 19/2004-C.E. issued under Rule 18 of Central Excise Rules, 2002 and as a result rebate is not allowed for violation of said mandatory conditions. However, Government also notes that one of such orders viz. Order No. 1228/2011-CX, dated 20-9-2011 In RE : Kosmos Healthcare Pvt. Ltd.[2013 (297) E.L.T. 465 (G.O.I.)] denying the rebate claim on the grounds that *"Clause 2(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture, which has been violated by the applicant; that they had not made any application for extension of time-limit before proper authority; that they had not produced any permission granting extension of time limit from competent authority till date; that the non-compliance of a substantive condition of Notification cannot be treated as a procedural lapse to be condoned".* This Order No. 1228/2011-CX, dated 20-9-2011 had been challenged by Kosmos Healthcare Pvt. Ltd. before Hon'ble High Court Calcutta vide Writ Petition No. 12337(W) of 2012.

12. Hon'ble High Court Calcutta while remanding back the case to the Revisionary Authority vide its Order dated 19.09.2012 observed as under:

21. On a reading of the Notification No. 40/2001 there is nothing to show that the time stipulation cannot be extended retrospectively, after the export, having regard to the facts of a particular case. The benefit of drawback has, in numerous case, been allowed notwithstanding the delay in export. This in itself shows that the respondent authorities have proceeded on the basis that the time stipulation of six months is not inflexible and the time stipulation can be condoned even at the time of consideration of an application for refund/drawback.

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28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.

32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed

deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.

33. The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above.

13. The respondent in their submissions have relied upon aforesaid Order of Hon'ble High Court Calcutta and have also contended that in the above case, no extension of time for exportation was made by the assessee and for this reason alone, the Commissioner of Appeals has correctly granted them the rebate.

14. Upon perusal of Order referred supra Government observes that Hon'ble High Court Calcutta has interalia observed that the *"Notification No.40/2001 does not require that extension of time to carry out the export should be granted in advance, prior to the export; that the Commissioner may post facto grant extension of time; that what is important is, the reason for delay; that even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed; that if there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended; that in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports"*. Government further observes that the Hon'ble High Court in his order has further noted that, *in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned".*

15. In the instant case, Government does not find anything on record indicating that the respondent had applied for extension of time in respect of delayed exports, either before or even after carrying out exports explaining

the reasons for the delay to the competent authority. Government taking into account the directions of Hon'ble Calcutta High Court, supra is of the considered opinion that in the absence any application for extension of time explaining sufficient cause for delay by the exporter, delay cannot be condoned. Hence, the reliance placed by the applicant on the aforesaid case law is misplaced. Government has also observed from the impugned Order that without appreciating the reasons for the delay beyond six months for exporting the impugned goods, the Commissioner (Appeals) has allowed the appeal of the respondent (M/s Glenmark Pharmaceuticals Ltd.) holding that the condition prescribed under the Notification No. 19/2004-CE (NT) 'that the excisable goods should be exported within six months' period from the date of its clearance for export from the factory of manufacture or warehouse, or within such extended period as the Commissioner of Central Excise may, in particular case allow, appears to be directory in nature and any breach of this procedural condition could have been condoned or rectified by the Competent Authority. This finding of the Commissioner (Appeals) is also contrary to the observations of the Hon'ble High Court Calcutta reproduced at para 12 Supra.

16. In this regard, Government finds it pertinent to reproduce the Order of Hon'ble High Court of Judicature at Bombay dated 15.09.2014 dismissing the Writ Petition No. 3388 of 2013, filed by M/s Cadila Health Care Limited [2015 (320) E.L.T. 287 (Bom.)] and upholding the Order-in-original dated 23rd December, 2009; which is as under:-

> *2. The concurrent orders are challenged on the ground that there was compliance with the notification and particularly the condition therein of export from the factory of manufacturer or warehouse. Though Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6th September, 2004 requires that the excisable goods shall be exported within six months from the date on which it were cleared for export from the factory of manufacture or warehouse, Mr. Shah would submit that the condition is satisfied if the time is extended and it is capable of*

being extended further by the Commissioner of Central Excise. In the present case, the power to grant extension was in fact invoked. Merely because the extension could not be produced before the authority dealing with the refund/rebate claim does not mean that the claim is liable to be rejected only on such formal ground. The notification itself talks of a condition of this nature as capable of being substantially complied with. The authority dealing with the claim for refund/rebate could have itself invoked the further power and granted reasonable extension.

3. We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.

4. In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise, Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed.

Government observes that the aforesaid High Court order dated 15.09.2014 (which is passed later to Hon'ble High Court Calcutta Order dated 19.09.2012 in Writ Petition No. 12337(W) of 2012 in case of M/s Kosmos Healthcare Pvt. Ltd. which is relied upon by the respondent) is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise

Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

17. Government also relies on GOI Order No. 390/2013-CX. dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

> *9. Government notes that the Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :*
>
> *"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow :"*
>
> *As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.*
>
> *10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government*

accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original.

18. In view of the foregoing discussion and applying the rationale of case laws referred above, Government holds that the respondent is not entitled to rebate of duty in respect of goods not exported within the period of six months in violation of condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002. Accordingly, Government sets aside the impugned order of Commissioner (Appeals) and restores the impugned Orders-in-Original.

19. Revision application succeeds in terms of above.

20. So ordered.

25618

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

ORDER No. 201/2018-CX (WZ)/ASRA/Mumbai DATED 25.06.2018.

To,

M/s Glenmark Pharamaceuticals Ltd.,
Glenmark House, B.D. Sawant Marg, Andheri (East),
Mumbai 400 099.

1. The Commissioner of GST & CX, Mumbai East Commissionerate. 9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. The Commissioner, Central Excise, (Appeals-II) Mumbai, 3rd Floor, GST Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, Division-III, GST & CX, Mumbai East Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.

ATTESTED

25/7/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)