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**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. 198/55/2016-RA / 2030

Date of Issue: 25.05.2021

ORDER NO. 207/2021-CX(WZ) /ASRA/Mumbai DATED 31.05.2021 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, 1962.

Applicant : The Commissioner of GST & CX, Belapur.

Respondent : M/s Ions Pharma Ltd.
106/107-A, Kanara Business Centre,
Near Laxmi Nagar, Ghatkopar (East),
Mumbai - 400 075.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. CD/09/RGD/2016 dated 21.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

ORDER

This revision application is filed by the Principal Commissioner, Central Excise, Raigad Commissionerate, Mumbai - 410206 (hereinafter referred to as "the applicant" or "the department") against the Order-in-Appeal No. CD/09/RGD/2016 dated 21.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-II in respect of M/s Ions Pharma.

2. Brief facts of the case are that M/s Ion Pharma, 106/107-A, Kanara Business Centre, Near Laxmi Nagar, Ghatkopar (East), Mumbai - 400 075 (hereinafter referred to as 'the respondent') had filed the rebate claim bearing No. 29430 dated 27.03.2015 under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 for an amount of Rs. 2,26,255/- (Rupees Two Lakh Twenty Six Thousand Two Hundred Fifty Five Only). The rebate sanctioning authority vide Order in Original No. 888/15-16/DC(Rebate)/Raigad dated 19.06.2015 rejected the rebate claims. The rebate sanctioning authority rejected the rebate claim on following grounds :-

a) The goods had been cleared for export directly by the respondent, a merchant exporter from the factory of the manufacturer but had been stored in a godown at Bhiwandi in contravention of the conditions and limitations laid down under 2(a) of the Notification No. 19/2004-CE(NT) dated 06.09.2004.

b) It was also observed that the respondent had not followed the procedure prescribed under Circular No. 294/10/97-CX dated 30.01.1997 to avail the waiver from the condition of direct export from the factory.

3. Being aggrieved by the Order in Original, the respondents filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai - II. The Appellate Authority vide Order in Appeal No. CD/09/RGD/2016 dated 21.01.2016 allowed the appeal and set aside the Order in Original. The appellate authority while passing the impugned order in appeal observed that :-

3.1 ~~The department had not denied the fact of export of the goods. He~~ therefore held that substantive benefit cannot be denied for procedural lapses.

3.2 The respondent had already supplied batch wise total quantity ~~alongwith customs attested packing list and contended that both tally~~ with each other. They also submitted a letter from the site head and R & D Manager of the manufacturer M/s Vibrant Pharmachem Pvt. Ltd. wherein it was informed that the description mentioned in the invoice is IUPAC name and that mentioned on the ARE-1 was a commercial chemical name. Both names are chemically representing same product and same CAS No. 134071-44-6 that is CISTOSYLAQTE.

4. The Principal Commissioner of Central Excise, Raigad found that the impugned order in appeal was not legal and proper and therefore directed the Assistant Commissioner (Rebate), Central Excise, Raigad to file revision application on the following grounds :

- (a) The goods had not been cleared for export from the factory of the manufacturer but had been stored in a godown at Bhiwandi in contravention of the conditions and limitations laid down under 2(a) of the Notification No. 19/2004-CE(NT) dated 06.09.2004.
- (b) As per Circular No. 294/10/97-CX dated 30.01.1997, an exporter (including a manufacturer exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition / not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise in-charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR-4 duly completed in sixuplicate and the invoice on which they have purchased the goods from the manufacturer.
- (c) The department has relied upon the following case laws :-

(i) ~~M/s Amaravati Co-op. Sugar Mills Ltd. Vs. Jt. Secretary, M.F.(D.R.), New Delhi 2016(331) ELT 245 (Mad.)~~

(ii) ~~M/s L'Amar Exports Pvt. Ltd. 2014(311) ELT 941 (GOI)~~

(iii) ~~M/s Philip Electronics India Ltd. 2011(273) ELT 461 (GOI)~~

- (d) The respondent failed to follow the procedure for waiver of the condition of direct exports from the factory / warehouse, as laid down in paragraph 8.1 of Circular No. 294/10/97-CX dated 30.01.1997 issued by the CBEC, New Delhi.
- (e) The onus of complying with the condition of direct export as laid down in Notification No. 19/2004-CE (NT) dated 06.09.2004 or the procedure laid down in the Circular No. 294/10/97-CX dated 30.01.1997 issued by the CBEC, New Delhi lies on the manufacturer exporter who has filed rebate claim in order to substantiate that there was no facility for manufacture at their godown and the goods are in fact the goods on which duty has been paid at the time of clearance from their factory.

5. A Personal hearing in the matter was granted on 10.03.2021. Shri Rajendra Shahasane, Advocate appeared online and reiterated the submissions. He reiterated his submission dated 09.05.2018. With regard to procedural errors, he submitted that substantive benefit cannot be denied when export and duty payment is not in doubt.

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 the Original Authority had rejected the impugned rebate claims on two grounds :-

- a) The goods had not been exported directly from the factory of manufacturer but were exported from a godown at Bhiwandi.
- b) The description of the goods in the Central Excise Invoice and that of relevant shipping bills is different from that of ARE-1.

8. Government observes that in the instant case, the respondent had procured the duty paid goods from the manufacturer M/s Vibrant Pharmachem Pvt. Ltd and the said goods were exported under the ARE-1s from the Bhiwandi Godown. The rebate claim filed by the respondent under Rule-18 of the Central Excise Rules, 2002 in respect of impugned goods was rejected by the Rebate Sanctioning Authority for the reasons as discussed in the foregoing paras. The appeal filed by the respondent against impugned Order in Original was allowed by the Appellate Authority. The department has filed the instant Revision Application contesting the subject Order in Appeal on the grounds as mentioned in the foregoing paras.

9. The Government finds that in the instant case the respondent have filed the claim for rebate under Rule 18 of the Central Excise Rules, 2002 in respect of duty paid on exported goods. It is observed that the rebate claims of the respondent were essentially rejected for the reason of non-compliance of the provisions under Notification No. 19/2004-CE(NT) dated 06.09.2004. The Government notes that clause 2(a) as well as the procedure mentioned in para 3(i) of the Notification No. 19/2004-CE (N.T.) dated 06.09.2004 are significant in the instant case. The condition 2(a) of the notification No. 19/2004-C-E (N.T.) dated 06.09.2004 reads as under:-

“(2) Conditions and limitations : -

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order.

Further the procedure contained under 3(a)(i) reads as under:

(3) Procedures:-

(a) Sealing of Goods and examination at the place of dispatch and export: -

(i) The manufacturer exporters registered under the Central Excise Rules, 2002 and merchant-exporters who procure and export the goods directly from the factory or warehouse can exercise the option of

exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing.”

9.1 On a harmonious interpretation of the provisions of the notification cited hereinbefore, Government observes that the goods should be exported from a factory or warehouse except in a case where there is any general or specific relaxation given by the CBEC. In the instant case, the respondent has procured the goods and stated that they have brought the said goods to their godown premises at Bhiwandi and exported the same under ARE-1. However, the impugned goods were not directly sent to port of export but were routed through the godown of the respondent. However, it is found that the conditions and limitations set out under para 2(a) & 3(a)(i) clearly illustrate that the exporter has been provided the option to export the goods either from the factory or warehouse and also from any other place, albeit with the permission of the Board. It would therefore follow that when such flexibility has already been provided, the provisions of the notification and the circular issued by the Board become ‘substantive’. Therefore, the respondent/manufacturer was obligated to strictly comply with the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004.

9.2 Therefore, the Government opines that when the respondent seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the respondent should have ensured strict compliance of the conditions attached to the said Notification. In this regard, Government places reliance on the Judgment in the case of *Mihir Textiles Ltd. v. Collector of Customs, Bombay, 1997 (92) E.L.T. 9 (S.C.)* wherein it is held that :

“concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory.”

9.3 In view of the above, the Government holds that benefit under a conditional Notification cannot be extended in case of non-fulfillment of

~~conditions and/or non-compliance of procedure prescribed therein as held~~
 by the Apex Court in the case of *Government of India v. Indian Tobacco Association - 2005 (187) E.L.T. 162 (S.C.)*; *Union of India v. Dharmendra Textile Processors - 2008 (231) E.L.T. 3 (S.C.)*. It is also settled law that a Notification has to be treated as a part of the statute and it should be read along with the Act as has been held in the case of *Collector of Central Excise v. Parle Exports (P) Ltd. - 1988 (38) E.L.T. 741 (S.C.)* and *Orient Weaving Mills Pvt. Ltd. v. Union of India - 1978 (2) E.L.T. J 311 (S.C.) (Constitution Bench)*.

10.1 The Government further finds that the above requirement of export of duty paid goods directly from factory or warehouse can be relaxed by CBEC by a general or specific order. It is observed that the CBEC vide circular No. 294/10/97-CX dated 30.01.1997 provides for relaxation of the condition of export directly from the factory or warehouse. This circular allows for relaxation subject to compliance of certain conditions. The conditions as stipulated in para (8) the said circular are as under:-

"8. However, in case of future exports [including the export as ship stores], to avail the aforesaid waiver from the condition of direct exports from the factory/ warehouse, the exporters will be required to follow the factory/ warehouse, the exporters will be required to follow the procedure prescribed in Circular No. 2/75 dated 22.1.75 [reiterated in Circular No. 18/92 dated 18.12.92] which is reiterated below with certain modifications:-

8.1 An exporter, (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/ not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise in-charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:-

(a) Name of the exporter

(b) Full description of excisable goods along with marks and /or numbers.

(c) Name of the manufacturer of excisable goods.

(d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared. (Photo copy of invoice/ duty paying document by submitted).

(e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR4 form should have a progressive number commencing with Sr. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/ consignments cleared from the same factory/ warehouse under different invoices or from the different factories/ warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/ goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR-4 forms should be in the following manner-

i) the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.

~~ii) triplicate and quadruplicate copies to be sent to the Superintendent~~
 In-charge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice/ duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt, and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate & quadruplicate copies of AR-4. He will also endorse on the reverse of manufacturers' invoice "GOODS EXPORTED - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt.) He will forward the triplicate copy to the Maritime Commissioner of the port from where the goods were/ are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter, Range/ Division/ Commissionerate indicating name of the exporter" godown, warehouse etc. are located and where AR-4 is prepared, AR-4 No. and date, description of items, corresponding invoice No. of the manufacturer, remarks regarding verification, date of dispatch of triplicate & quadruplicate copy.

iii) the quintuplicate copy is to be retained by the Superintendent I/c of the range from where the goods have been exported for his record.

iv) the sextuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than shipstores, should be exported within a period of six month from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period, (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise, after following the usual procedure.

8.9 The Chief Account Officer of the Maritime Commissioner or the Internal audit Department, as the case may be, should conduct cent-percent-post-audit of the documents by the making a reference to the Chief Accounts Officer of the Commissionerate from where the goods had been originally cleared on payment of duty as per existing procedure."

10.2 Government observes that the purpose of the CBEC Circular No.294/10/97-CX dated 30.01.1997 was to ensure that in cases where the goods cannot be exported directly from the place of the manufacturer (e.g. Merchant exporters), the goods exported should remain in original factory packed condition; i.e. the goods should be clearly identifiable with the goods actually exported. The circular has been issued after taking into consideration the difficulties that could be faced by the exporters and with a view to simplify the procedures stipulated by the notification. In the instant case the respondent has neither made any application to the jurisdictional central excise office nor sought permission to store the goods intended for export as required under para 8.1. of the Circular dated 30.01.1997. Further, the respondent had failed to produce the impugned exported goods before the jurisdictional Central Excise Officers at the time of export to establish the identity of the goods and to enable the officers to ascertain as to whether the same were in original factory packed condition or otherwise. The respondent who intended to claim benefits of the export rebate was expected to strictly comply with the prescribed procedure without leaving any scope for doubt about the identity of the exported goods. Government therefore concurs with the view expressed by the adjudicating authority while passing the order-in-original that the respondent has failed to comply with the conditions/procedure prescribed under the Circular No. 294/10/97-CX dated 30.01.1996 specifically allowing for relaxation in such circumstances.

11. In view of above discussion, the Government finds that the original authority has rightly held the rebate claim to be inadmissible on the

~~grounds of non-compliance of the conditions/ procedure under Notification~~
No. 19/2004-C.E. (N.T.), dated 04.09.2004 due to the failure of the respondent to adhere to the relaxation allowed thereto vide CBEC Circular No. 294/10/97-CX dated 30.01.1997.

12. Government holds that the Order-in-Appeal No. CD/09/RGD/2016 dated 21.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-II is not legal and proper. The Government therefore sets aside the impugned order in appeal and allows the revision application filed by the department.

13. The Revision Application is disposed off on the above terms.


21/5/21
(SHRAWAN KUMAR)

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

ORDER No. 207/2021-CX(WZ) /ASRA/Mumbai DATED 21.05.2021

To,

The Commissioner of GST & CX,
Belapur Commissionerate 1st Floor,
CGO Complex, CBD Belapur,
Navi Mumbai - 400 614.

Copy to:

1. M/s Ions Pharma Ltd., 106/107-A, Kanara Business Centre, Near Laxmi Nagar, Ghatkopar (East), Mumbai - 400 075.
2. The Commissioner, Central Excise, (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
3. The Deputy / Assistant Commissioner (Rebate), 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai.
- ~~5. Guard file.~~
6. Spare Copy.