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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.195/04/2016-RA /2811 Date of Issue: 21.07.2021

ORDER NO. 248/2021-CX (WZ)/ASRA/MUMBAI DATED 20.07.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Progene Pharma Pvt. Ltd.,
1, Sahyadri Niwas, Ground Floor,
Plot No. 26, Sector – 24,
Turbhe, New Mumbai – 400 705.

Respondents : Commissioner of CGST, Belapur.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/671/RGD/2015 dated 03.08.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.

ORDER

This Revision Application is filed by M/s Progene Pharma Pvt. Ltd., 1, Sahyadri Niwas, Ground Floor, Plot No. 26, Sector – 24, Turbhe, New Mumbai – 400 705 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/671/RGD/2015 dated 03.08.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.

2. The issue in brief is that the applicants had filed rebate claims under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 totally amounting to Rs.1,44,091/- (Rupees One Lakh Forty-Four Thousand Ninety-One Only). The details are as under :-

Sl. No.	ARE-1 No. / Date	MR Date	RC-No/Date	Amount of Rebate claimed (Rs.)
1	01/20.05.2013	12.06.2013	5343/10.06.2014	26257/-
2	02/20.05.2013	12.06.2013	5344/10.06.2014	48,921/-
3	03/20.05.2013	12.06.2013	5345/10.06.2014	55,935/-
4	04/30.05.2013	12.06.2013	5342/10.06.2014	12,978/-
			TOTAL	1,44,091/-

The rebate sanctioning authority observed that the goods were not exported directly from the manufacturer's premises. Also, the ARE-1 did not bear the endorsement of the manufacturer, from where the goods were cleared on payment of duty. Further, triplicate copy of the ARE-1 did not bear the endorsement of the Superintendent in charge of the manufacturing unit certifying the correctness of the duty payment, against which rebate had been claimed. It was also observed that the applicant had declared wrong particulars of the rebate sanctioning authority. As such deficiency memo cum SCN F. No. V/15-309/Reb/D.M./Pregene/Rgd/2014-15 dated 06.08.2014 was issued to the applicant. The adjudicating authority vide Order in Original

No. 1667/14-15/DC(Rebate)/Raigad dated 09.09.2014 rejected all the rebate claims.

3. Aggrieved by the Order in Original, the applicants filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai Zone-II. The appellate authority vide Order in Appeal No. CD/671/RGD/2015 dated 03.08.2015 upheld the Original Order. The appellate authority while passing the impugned Order in Appeal observed that :-

a) It is an admitted fact that the applicant had not exported the goods from the manufacturer's premises or warehouse but the goods were exported from the dealer's premises. In such cases, the applicant should have followed the procedure as laid down under Circular No. 18/92-CX6 dated 18.12.1992 issued under F. No. 213/28/92-CX.6 reiterated in Circular No. 294/10/97-CX dated 30.01.1997 issued under F. No. 209/27/92-CX.6 which they have failed to follow.

b) It was an admitted fact that the ARE-1 submitted by the applicant did not contain the signature of the manufacturer and the consignment under the said ARE-1 was exported under self removal procedure. The appellant had not given any proof that the goods exported were examined either by the excise officer or the customs officer.

c) The provisions under the said circulars stipulate that the applicant should make an application in writing to the Superintendent of Central Excise in charge of the Range under whose jurisdiction the exported goods were stored whereas from the records it is forthcoming that the applicant had not filed any application.

d) The exported goods were not sealed by a Central Excise officer. This is a statutory requirement under Notification No. 19/2004-CE (NT) dated 06.09.2004 which had not been complied with by the applicant.

e) The identity / correlation of the goods originally cleared from the manufacturing unit with the goods cleared from the dealer's godown could not be established and hence the duty paid nature of the goods exported was also not established.

f) The lapse on the part of the applicant cannot be ignored in view of decision of the Hon'ble High Court in case of M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. 2014(305) ELT 100 (All.)

4. Aggrieved by the impugned Order in Appeal, the applicant have filed the instant Revision Application on the following grounds :-

a) Rebate Sanctioning Authority and Appellate Authority had not disputed export of goods, claim of rebate and sanctioning of rebate claim. It is also not in dispute that the goods had been cleared on payment of duty.

b) The Rule 18 nowhere restricts the claim of rebate and only mentioned that the rebate claim shall be subject to conditions and limitations if any to be specified in the notification which is issued under the Rule.

c) In terms of Rule 18 of CER, 2004, department issued Notification No. 19/2004 CE (NT) dated 06.09.2004 (Copy of Notification enclosed as Exhibit-L) as amended, which lays down procedure, terms, conditions and limitation for sanction of rebate of duty paid on export of goods. From the reading of Notification and the rule, it is clear that nowhere in the Rule it stipulates that the rebate will not be sanctioned if the procedure and/ or guidelines given in the Notification issued there under is not followed.

d) The legislation has allowed the rebate claim of duty paid on goods cleared for exports with intention not to export taxes and duties on the goods and to improve the export and to give impetus to the exports

e) That, further regarding sanctioning of refund of rebate claim filed by exporter. The CBEC has clarified in para 2 of Circular No. 510/06/2000-CX, dated 03.02.2000 that the duty on export goods should be paid by applying market rate as it prevails at the time the duty is paid on such goods. The duty element shown on AR-4 has to be rebated, if the jurisdictional Range officer certifies it to be correct. There is no question of re-qualifying the amount of rebate by the rebate sanctioning authority by applying some other rate of exchange prevalent subsequent to the date on which the duty was paid. It is also

clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim.

f) It is established fact that when Notifications, Circulars, clarifications issued for the benefit of industry and exporters benefit given therein should not be denied on the ground of procedural errors or delay if any in complying with procedures.

g) It is alleged in the notice that the goods were not directly exported from the manufacturers premises as per the conditions laid down in Notification No: 19/2004 CE (NT) Dated 06.09.2004 i.e. goods have not been exported from manufacturers premises or warehouse to become entitled for rebate claim. Further it was also seen that ARE-1's does not bear the endorsement of the manufacturer, from where goods have been manufactured and cleared, on payment of duty. The order passed on the basis of such notice needs to be set aside.

h) The applicants are registered under Central Excise having registration No. AADCP8346CED001 as dealer and started dealership business in a small way recently and on receiving export orders have exported goods for the first time to our customers after procuring the material from different manufacturers from various places.

i) In all cases, as can be seen from the copies of invoices submitted with the rebate claims, goods have been procured on payment of duty at applicable rates. The manufacturers had also given letter to the effect that they had not claimed any rebate on the clearances made to us for exports. The condition that the goods should be cleared in the presence of excise officers had been fulfilled as the goods had been verified by the Customs Officers while exporting the goods from port of shipment.

j) The Rules does not specify any condition that goods should be exported under ARE-1 from the place of manufacturer/warehouse for claiming rebate of duty on goods exported.

k) The export is not in doubt and the Shipping bill clearly gives details of products exported and the ARE-1 under which goods have been cleared

also gives details of the goods procured and detailed statement is being enclosed with rebate claim to correlate the exports with goods procured where goods are not cleared directly from factory under ARE-1.

l) That, the Ld. Appellate Authority in his findings has held that export of goods from factory of manufacturer or warehouse or export by merchant exporter, sealing at the place of dispatch by a Central Excise Officer is a mandatory condition precedent for becoming entitled to claim of rebate in terms of Rule 18 of the CER, 2002 and Notification issued there under. Order has been passed on the basis of incorrect interpretation of law.

m) It is submitted that, as admitted by the exporter, even though there was procedural error in not following the conditions laid down under the notification, benefit available to the appellants under the law should not be denied for such lapse when basic conditions of exports have been fulfilled by the exporter.

n) When exporters are allowed clearing of goods under self sealing which does not need presence of Central Excise Officers and which does not fulfill condition of export should be made in the presence of the Central Excise officer as stated in the Notification, the export made in the present case directly (due to ignorance of law) and when the same is checked by the Customs officers during exports, rebate claim should not be denied and order needs to be set aside.

o) The Ld. Appellate Authority did not consider the case laws and basic principle behind rebate facility given by Government of India. Courts and Tribunals in catena of cases have condoned the procedural lapses if any committed by the exporter without resorting to illegal methods when it comes to giving substantial benefit which otherwise would be available. That, the procedure of submitting original and duplicate copy of ARE-1 along with rebate claim is a procedural and it is not mandatory requirement as made out. The applicant relied on following case laws in support.

- Kansal Knitwears Vs CCE, Chandigarh, 2001 (136) ELT 467
- Shantilal & Bhasali Vs GOI, 1991 (053) ELT 558 (GOI)
- Hebenkraft Vs GOI, 2001 (136) ELT 979 (GOI) E
- Barot Exports Vs GOI, 2006 (203) ELT 321 (GOI)

p) The Hon'ble Bombay High Court in its judgment in the case of allowing of rebate claim when original and duplicate copy of ARE-1 have not been produced has held that, requirement of production of original and duplicate copy of ARE-1 as per the CER, 2002 and Notification No. 19/2004 CE (NT) is given only to facilitate the processing of rebate claim and should not be raised to mandatory requirement to deny rebate claim when other evidence are in favor of assessee. The order passed in the instant case needs to be set aside on this ground only.

- UM Cables Limited Vs UOI, 2013 (293) ELT 641 (H.C.)
- M/s Vee Excel Drugs & Pharm. Pvt. Ltd. Vs UOI, 2014 (305) ELT 100 (All.)

q) The Ld. Appellate Authority had passed non speaking order without considering the submissions made and case laws cited and has only relied on the order passed by Adjudicating Authority to deny the substantial relief available under the law to the exporters.

r) That, in view of our submission made herein above, applicants have requested to set aside the Order in Appeal upholding the Order in original which rejected the rebate claim;

5. The applicants vide their email dated 11.06.2021 have requested to waive off their personal hearings and stated that they have nothing much to say apart from the attached case laws and their application. They have further requested to take decision on the merit of the case without personal hearing. In view of the above, the case is taken up decision based on the submissions by the applicant and other documents on records.

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. Government observes that in the instant case, the applicants had procured the duty paid goods from different manufacturers and said goods were exported under the ARE-1s from their premises i.e. dealer's premises. The rebate claim filed by the applicants 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 applicants against impugned Order in Original was rejected by the Appellate Authority. As such, the applicants have filed the instant Revision Application contesting the impugned Order in Appeal on the grounds as mentioned in the forgoing paras.

8. The Government finds that in the instant case the applicants 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 applicants 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

8.1 From harmonious perusal of above said statutory provisions, Government notes that the goods should be exported from a factory or warehouse except any general or specific relaxation given by the CBEC. In the instant case, the applicants procured the goods from the manufacturer / open market and stated to have bought the said goods at their premises and exported the same under ARE-1. The fact that the goods were removed by the manufacturers under ARE-1s implies that the same were intended to be cleared for export. Thus, it is found that the impugned goods were not directly sent to port of export but were routed through the premises of the applicants. However, it is found that the conditions and limitations under in 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. When such flexibility is provided, the provisions of law become 'substantive'. Thus, the applicants/ manufacturer was obligated to comply the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004 strictly.

8.2 Therefore, the Government opines that when the applicants seek 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 applicants should have ensured strict compliance of the conditions attached to the said Notification. 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."*

8.3 In view of 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.). Also it is 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 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).

9. 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 from condition of export directly from factory or warehouse. This circular allows the 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 18.12.921 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 sixtuplicate, 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 sixtuplicate 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"

9.2 While issuing the Circular No.294/10/97-CX dated 30.01.1997, intention of the Board was to ensure that in certain cases where the goods could not be exported directly from the place of the manufacturer (e.g. Merchant exporters), was to ensure that the goods exported should remain in original factory packed i.e. the goods should be clearly identifiable with the goods actually exported. In the instant case the applicants have not made any application to the jurisdictional central excise office and sought permission to store the goods intended for export as required under para 8.1. of the Circular dated 30.01.1997. Further, they 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 as to whether the same were in original factory packed condition or otherwise. The applicants, having intention to claim benefits of the export incentive, were expected to comply with the procedure as above strictly without leaving no scope for challenging the identity of the goods at the time of export itself.

9.3 In view of above, it is found that the applicants have failed to comply with the conditions / procedure (as detailed above) of relaxation provided by the Circular No. 294/10/97-CX dated 30.01.1996 as rightly observed by the adjudicating authority while passing the impugned order in original.

10. The Government opines 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 from the factory premises under the relevant ARE-1 applications were actually exported. 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 removed from the factory on payment of duty and the same have been exported. The Government holds that, being recipient of export incentives in the form of rebate, the onus lies on the applicants to satisfy the rebate sanctioning authority on the above two aspects particularly when the variation is noticed in respect of origin of the notified goods as above. Government also observes that the applicant had not intimated about the receipt of goods from various units and thus goods received from various manufacturers were not verified physically for the marks and numbers and identity of the exports goods for establishing duty paid nature of the goods. Therefore, in the instant case, the export of the goods in the original packing has not been established by the applicant. Neither the goods were examined by the concerned Superintendent, Central Excise nor there were any identifiable marks/numbers on the goods to correlate them with the goods cleared from factory of manufacture on payment of duty. Therefore, the essential condition of export of duty paid goods for claiming rebate of duty under Rule 18 of Central Excise Rules, 2002 is not fulfilled.

11. With regard to the assertion made by the applicant that the goods were duty paid and at the time of stuffing the Customs officers had seen all the invoices; Government notes that the Officers could not have halted the export. The applicants had not followed the procedures prescribed under Circular No. 294/10/97-CX dated 30.01.1997 and therefore the requirement of co-relating the goods cleared from the manufacturer with the exported goods could not be satisfied. The fact whether the goods were duty paid could not have been

ascertained by the Customs Officer. It must be borne in mind that the circular dated 30.01.1997 was issued by the Board in exercise of the powers vested in it to set out a procedure which was consistent with the provisions of the Act and the rules. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018 (362) ELT 404 (Mad)] would be relevant here. The relevant text is reproduced.

> *"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. ....."*

12. In view of above discussion, the Government finds that the original authority has rightly held rebate inadmissible on the grounds of non compliance of the conditions/ procedure under Notification No. 19/2004-C.E. (N.T.), dated 04.09.2004 which could have been relaxed otherwise as per the guidelines given by CBEC in it's Circular No. 294/10/97-CX dated 30.01.1997.

13. In view of the above, Government does not find any infirmity in the Order-in-Appeal No. CD/671/RGD/2015 dated 03.08.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and, therefore, upholds the impugned order in appeal.

14. The Revision Application is disposed off on above terms.

Shrawan
20/7/21

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

ORDER No.248/2021-CX (WZ)/ASRA/Mumbai DATED 20.07.2021.

To,
M/s Progene Pharma Pvt. Ltd.,
1, Sahyadri Niwas, Ground Floor,
Plot No. 26, Sector – 24,
Turbhe, New Mumbai – 400 705

Copy to:

1. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
2. The Deputy Commissioner (Rebate), GST & CX Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy.