

**REGISTERED
SPEED POST**



**F.No. 195/137/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066**

Date of Issue...19/2/14

ORDER NO. 25/14-Cx DATED 18.02.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.US/507/RGD/2011 dated 30.12.11 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

Applicant : M/s Mission Vivacare Ltd., Mumbai.

Respondent : Commissioner of Central Excise, Mumbai Zone-II, Mumbai,

ORDER

These revision applications are filed by M/s Mission Vivacare Ltd., Mumbai against the order-in-appeal No.US/507/RGD/2011 dated 30.12.11 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to order-in-original dated 4.3.11 passed by the Additional Commissioner of Central Excise (Rebate) Mumbai-II.

2. Brief facts of the case are that the applicants are a merchant exporter and are engaged in procuring P or P Medicaments falling under chapter Heading 30 of CETA 1985 from actual manufacturers and export the same to their foreign buyers. The applicants had filed a rebate claim claiming rebate amount to Rs.238960/- under Rule 18 of Central Excise Rules, 2002 with the Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate against export of P or P Medicaments under ARE-1 No.38 dated 22.12.2007. The Assistant Commissioner of Central Excise vide his OIO No.3651/08-09 dated 6.3.2009 sanctioned the rebate claim. The said order-in-original was reviewed by the Commissioner of Central Excise and appeal was filed before Commissioner (Appeals) on the ground that some of the goods were not exported within the period as stipulated in condition 2(b) of the Notification No.19/2004-CE(NT) dated 6.09.04 i.e. within six months from the date on which they were cleared for export from the factory of manufacturer or within permitted extended period. After due process of law, Commissioner (Appeals) has set aside the order-in-original and allowed the appeal. Simultaneously, on the same grounds, a show cause cum demand notice was also issued to the applicants asking them to show cause as to why the rebate amount of Rs.119480/- erroneously refunded to them vide above said order dated 6.3.2009 under Rule 18 of Central Excise Rules, 2002 should not be recovered from them in terms of provisions under Section 11A(1) of Central Excise Act 1944 and the rules made thereunder, interest under Section 11AB of Central Excise Act 1944 should not be recovered

from them and penalty should not be imposed on them under Section 11AC of Central Excise Act 1944. Subsequently, the original authority vide order-in-original dated 4.3.11 confirmed the demand of already sanctioned rebate claim with applicable interest.

3. Being aggrieved by the impugned order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Commissioner (Appeals) failed to appreciate that the Assistant Commissioner of Customs and Central Excise, Hyderabad 'N' Division, as communicated by the Supdt. (Tech.) vide his letter C.No.V/Tech/30/106/08-Misc dated 24.10.2008 had granted permission for export of the remaining 50,000 vials of "Microcef 1 gm injection" received under ARE-1 No.38/07 dated 22.12.2007 by another three months and accordingly, applicants had exported the said consignment on 06.12.2008 vide Mate Receipt No. 82193247 dated 06.12.2008 as per the provisions of Para 2(b) of Notification No.19/2004-CE (NT) dated 06.09.2004 as amended, issued under Rule 18 of Central Excise Rules, 2004. The Commissioner (Appeals) not only set aside the order passed by the Assistant Commissioner (Rebate) in respect of exports made after 6 months after obtaining due permission from the jurisdictional Assistant Commissioner, but also set aside the order of said Assistant Commissioner (Rebate) of the rebate sanctioned in respect of export made within 6 months.

4.2 Para 2 (b) of Notification No.19/2004-CE(NT) dated 6.9.2004 as amended read as follows:

(b) the excisable goods shall be exported within six months 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;"

The Commissioner (Appeals) failed to appreciate that there was no condition of obtaining permission from the jurisdictional Assistant Commissioner before the stipulated period of six months and gravely erred in denying the rebate claim travelling beyond the condition stipulated in Para 2(b) of Notification No.19/2004-CE(NT), supra.

4.3 There is no dispute whatsoever about the exports having been taken place in the impugned order; that the rules 18 & 19 of Central Excise Rules, 2002 are beneficial pieces of legislation in order to bring much needed foreign currency and the same are to be interpreted liberally. It is a settled principle of law that taxes should not be exported. The basic requirement is that the duty paid goods are to be exported and the foreign currency is obtained from the overseas customers. Once these requirements are fulfilled other subsidiary requirements are to be treated as procedural and not much importance is to be attributed. The Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd v Deputy Commissioner & Others, 1991 (55) ELT 437 (SC) has held that such a view would be justified if the condition was a substantive one and one fundamental to the policy underlying the exemption.

4.4 When there is no dispute about the fact that the impugned goods have been exported and rebate claim is filed within the stipulated time, the delay in export by more than 6 months is to be treated as a procedural infraction or technical mistake and there is no question of denying the benefits of exports and recovery of duty. In support of this contention, applicants rely upon the decisions in the case of In Re: Barot Exports, 2006 (203) ELT 321 (GOI), In Re: Harison Chemicals, 2006 (200) ELT 171 (GOI) and that there is catena of judgements of Hon'ble Tribunal, Courts and Govt. of India as cited by the

applicants to the effect that substantial benefit of rebate should not be demand on procedural infractions.

5. Personal hearing scheduled in this case on 23.12.13 was attended by Shri Gopal N.Jadhav, Asstt. Manager of the applicant company on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant's rebate claim of Rs.238690/- was initially sanctioned by the rebate sanctioning authority vide order-in-original dated 6.3.2009. The department filed appeal before Commissioner (Appeals) against said order-in-original on the ground that part goods were not exported within six months from the date on which they were cleared for export from the factory of manufacture or within permitted extended period in terms of Notification No.19/04-CE(NT) dated 6.9.2004 and therefore the rebate claim of Rs.1194801/- involved on part goods exported after six months was not admissible. Commissioner (Appeals) vide order-in-appeal No.YDB/366/RGD/2010 dated 24.6.2010 allowed the appeal of the department. Simultaneously department issued SCN for recovery of said amount of Rs.119480/-. The applicant filed revision application before Government of India against said order-in-appeal dated 24.6.2010. Meanwhile, the original authority vide order-in-original dated 4.3.11 confirmed the demand of erroneously sanctioned rebate, of Rs.119480/-. Commissioner (Appeals) vide order-in-appeal dated 30.12.11 has upheld the said order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

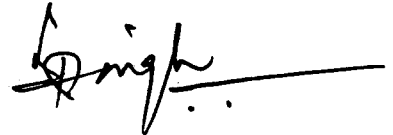
8. The revision application No.195/250/10 of applicant filed against the order-in-appeal No.366 dated 24.6.10 was decided vide GOI Revision Order No.524/12-Cx dated 30.4.12. The para (9) of said order reads as under:

"9. In such a situation, Government is of the opinion that rebate claim against 50,000 vials of the impugned goods exported on 23.2.08 was rightly sanctioned to the applicants by original authority which is upheld by Commissioner (Appeals) also. For remaining quantity of 50,000 vials exported on dated 6.12.08, the original authority can sanction this rebate claim if valid extension permission is produced by the applicant. Therefore, the portion of impugned orders relating to disputed rebate claims of duty paid on remaining quantity of 50,000 vials exported on 6.12.08 is set aside and case is remanded to original authority for denovo adjudication of case in the light of decision of competent authority on the applicant's application for extension of said 6 month's time limit. The portion of impugned order-in-original, sanctioning rebate claim of duty paid on 50,000 vials exported on 23.2.08 is retored."

9. In view of said GOI order dated 30.4.12, confirmation of demand of Rs.119480/- vide order-in-original dated 4.3.11 cannot sustain. The matter already stands remanded to the original authority. As such the impugned order-in-appeal/original are set aside and original authority is directed to decide the case as directed in GOI Revision Order No.524/12-Cx dated 30.4.12.

10. The revision application is disposed off in terms of above.

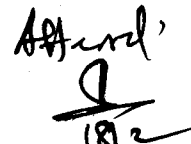
11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Mission Vivacare Ltd.,
901-A, Raheja Plaza, LBS Marg,
Ghatkopar (W), Mumbai-400 086.



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C -O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 25/2014-Cx dated 18.02.2014

Copy to:

1. Commissioner of Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
2. The Commissioner of 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 Additional Commissioner of Central Excise (Rebate), Raigad Commissionerate, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, New Panvel, Navi Mumbai-410 086.
4. PA to JS(RA)
5. Guard File.
6. Spare copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)