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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

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F.No.195/209/2013-RA / 3952

Date of Issue: 04.08.2021

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ORDER NO. 253/2021-CX (WZ)/ASRA/MUMBAI DATED 26.7.2021 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, 1944.

Applicants : M/s Mission Vivacare Ltd

Respondents : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/749/RGD/2012 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

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## ORDER

This Revision Application is filed by M/s Mission Vivacare Ltd., Corporate Office, 901-A, Raheja Plaza, LBS Marg, Ghatkopar(West), Mumbai 400 086 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. US/749/RGD/2012 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the Applicant, a merchant exporter, is engaged in the export business of pharmaceutical formulations falling under Chapter 30. They filed three rebate claim totally to Rs. 5,87,632/- under Rule 18 of the Central Excise Rules, 2002 along with the relevant documents. On scrutiny of the claims, it was noticed that the goods were not exported within six months of the clearance of the goods from the factory as per condition 3 of the conditions relating to exports and the Applicant was issued Deficiency Memo Cum SCN dated 15.05.2012, 16.05.2012 and 21.05.2012. The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 531/11-12/DC (Rebate)/Raigad dated 22.05.2012 rejected the rebate claims on the grounds that the goods were not exported within six months from the date of clearance of the goods from the factory as per the condition Para 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004. Aggrieved, the Applicant filed an appeal before the Commissioner of Central Excise (Appeals-II), Mumbai. The Commissioner(Appeals) vide Order-in-Appeal No. US/749/RGD/2012 dated 31.10.2012 reject their appeal and upheld the Order-in-Original dated 22.05.2012.

3. Being aggrieved, the Applicant filed the current Revision Application of the following grounds:

- (i) The impugned Order-in-Appeal is passed without application of mind as there was no contravention of condition Para 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004 as amended issued under Rule 18 of the Central Excise Rules, 2002.

- (ii) As per condition in 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004 as amended, the Applicant had requested the jurisdictional Commissioner of Central Excise, Daman vide letter dated 21.06.2010 seeking extension of time by another six months and the same was not reject, which means Applicant's application was still under consideration by the jurisdictional Central Excise Authorities. The condition of export of goods within six months period is not a rigid one and the jurisdictional Central Excise Authorities Maritime Commissioner have the discretionary power to extend the time limit. In this they relied in the case of Commr. Vs Euro Cotspin Ltd [2004 (165) ELT 312 (Tri-Delhi)]. The Commissioner (Appeals) failed to appreciate that the authorities delegated the power to extend the condition of six months for a further period by the CBEC could permit for export even after six months from the date of clearance of excisable goods for export beyond the period of six months due to compelling reasons and gravely erred in denying the rebate claim.
- (iii) In absence of any dispute about the actual export of the goods, demand of duty on the same was not justified. Notification is only a procedural notification so as to ensure that the goods are actually exported and the limit of six months is provided in the ordinary circumstances. Admittedly, the goods could not be exported earlier on account of general recession worldwide and subsequent export not having been in dispute, the Applicant is entitled to refund of duty deposited by them and that the notification cannot create liability against them inasmuch as no duty is recoverable on the exported goods and they could have cleared the goods under the claim of rebate. Even in cases of clandestine removal, duties are not demanded if it is proved that the goods are exported. Notification in question is not creating substantive charge and is only a procedural notification. The extension of time of export having been granted by Assistant Commissioner, it was not open to the same authority to have held that the Applicant had not applied for extension before the lapse of six months period. The Commissioner (Appeals) failed

to appreciate that the provisions of Rule 18 of Central Excise Rules, 2002 is a beneficial piece of legislation and as to what are substantial requirements and which are procedural requirements for availing the benefit of Rule 18 of Central Excise Rules, 2002.

- (iv) 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 being 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.
- (v) The rebate/drawback and other such export promotion scheme of the Government, are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In this the Applicant placed reliance on the following case laws:
- (a) Suksha International Vs UOI [1989 (39) ELT 503 (S.C.)].
  - (b) UIO Vs A.V. Narasimhalu [1983 (13) ELT 1534 (SC)].
  - (c) Formika India v. Collector of C.Ex [1995 (77) E.LT 511 (SC)].
  - (d) CCE, Kolkata Vs Krishna Traders [2007 (216) ELT 379 (Tri.-Kolkata)].
  - (e) Modern Process Printers [2006 (204) ELT 632 (GOI)].
  - (f) Birla VXL Ltd. [1998 (99) ELT 387 (Trib.)].
- (vi) While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commr. [1991 (55) ELT 437 (SC)]

that there are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve. There has to be distinction between what is a matter of form and one of substance. This decision has been affirmed by the Hon'ble Supreme court in the case of Novopan India Ltd v CCE&C., Hyderabad [1994 (73) ELT 769 (SC)]. The Applicant therefore, earnestly feel that the aforesaid observations of Hon'ble Supreme Court are squarely applicable in the present facts and circumstances of the case also. In fact, as regards rebate specifically, it is now 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 now 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 manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned.

- (vii) When there is no dispute about the fact that the impugned goods had been exported and rebate claim was 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)].
- (viii) Export of goods after six months from the clearance from factory is merely procedural one and on account of procedural lapse the substantive benefits of the applicant cannot be denied for that the Applicant relied upon the various preceding and bindings of the lower courts and Apex Court.

(ix) The Commissioner (Appeals) failed to appreciate that export itself not dutiable under Excise law and that delayed export is permissible. When the export itself was not dutiable under Excise Law, delayed export if not permitted, that will frustrate the object of export. In support of this contention, Applicant rely and refer to the decision of Hon'ble Tribunal in the case of CCE Kolkata-I Vs Krishna Traders [2007 (216) ELT 379 (Tri.-Kolkata)] and submit that although this decision was in respect of Rule 19 of CER 2002, the ratio of which is equally applicable to the exports made under Rule 18 of CER 2002, insofar as delay beyond 6 months period is concerned.

(x) The Applicant prayed that the impugned Order-in-Appeal be set aside and pass the consequential relief as deemed fit.

4. Personal hearing in the case was fixed on 16.02.2018, 30.08.2018, 03.10.2019, but no one appeared. In view of change in Revisionary Authority, personal hearing was fixed for 02.02.2021, 18.03.2021 and 25.03.2021, however non appeared for the hearing. Hence the case is taken up on merits.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. On perusal of records, Government observes that the Applicant had filed three rebate claim totally to Rs. 5,87,632/- under Rule 18 of the Central Excise Rules, 2002 along with the relevant documents. The details are as given below:

Sr.No.	Rebate claim No. & dt.	Amount (Rs.)	ARE-1 No & date	S/B No & dt	B/L No & dt
1	23048 dt 25.01.11	2,36,900	328/09-10 dt 08.01.10	9134445 dt 11.12.10 9134449 dt 11.12.10	APLU060041842 dt 17.12.10 APLU054961885 dt 17.12.10
2	8347 dt 28.07.11	1,13,578	04/2010-11 dt 22.06.10	4200914 dt 21.05.11 4179906 dt 20.06.11	INBOM065591 dt 27.06.11 INBOM065495 dt 22.06.11
3	8351 dt 28.07.11	2,37,154	15/2010 dt 24.06.10	4179906 dt 20.06.11 4179899	INBOM065495 dt 22.06.11 INBOM065490

				dt 20.06.11	dt 24.06.11
	Total	5,87,632			

It appeared that the goods were not exported within six months of the clearance of the goods from the factory and therefore the condition laid down at para 2(b) of the Notification No. 19/2004-CE (N.T.) dated 06.09.2004 which prescribes the conditions and procedure for sanction of rebate, was not satisfied. The Applicant was issued Deficiency Memo Cum SCN dated 15.05.2012, 16.05.2012 and 21.05.2012. The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 531/11-12/DC (Rebate)/Raigad dated 22.05.2012 rejected the rebate claims on the grounds that the goods were not exported within six months from the date of clearance of the goods from the factory as per the condition Para 2(b) of Notification No.19/2004-CE(NT) dated 06.09.2004. Aggrieved, the Applicant filed an appeal before the Commissioner of Central Excise (Appeals-II), Mumbai. The Commissioner(Appeals) vide Order-in-Appeal No. US/749/RGD/2012 dated 31.10.2012 reject their appeal and upheld the Order-in-Original dated 22.05.2012.

7. Government notes that Notification No. 19/2004-CE (NT) dated 06.09.004 prescribes the condition and limitations upon which a claim for rebate can be granted:

*"(2) Conditions and limitations :-*

*(a) that the excisable goods shall be exported after by the Central Board of Excise and Customs by a general or special order;*

*(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;"*

Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional

Commissioner for extension of the prescribed time limit. Therefore, this time limit is procedural.

8.1 In respect of Rebate Claim No. 23048, ARE-1 No. 328/09-10 dated 08.01.2010 of Rs. 2,36,900/-, Government observes that since their buyer had instructed the Applicant to hold the materials till further instructions, the Applicant vide their letter dated 21.06.2010 addressed to the Commissioner of Central Excise, Daman had applied for permission to extended period of more than six months for the goods cleared for export but not exported and also a reminder letter dated 29.09.2010. Further in reply to the Deficiency Memo dated 21.05.2012, the Applicant vide letter dated 22.05.2012 had submitted that they had not received the extension and meanwhile they got instruction from their overseas buyer to export the materials and hence they exported the goods and then submitted the rebate claim. Further they submitted that they had not contravened or violated any provision of Central Excise rule and regulations.

8.2 In respect of Rebate Claim No 8347, ARE-1 No. 04/2010-11 dated 22.06.2010 of Rs. 1,13,578/-, Government observes that since their buyer had instructed the Applicant to hold the materials till further instructions, the Applicant had vide their letter dated 06.12.2010 addressed to the jurisdictional Assistant Commissioner of Central Excise, Hyderabad 'N' Division sought permission for extension of another six months to export the goods. The Department then vide letter dated 29.12.2010 had asked the Applicant to explain the reason of buyer's instruction. The Applicant vide letter dated 07.01.2011 submitted the copy of letter dated 22.06.2010 received from their overseas buyer M/s AL Zayoona Co and requested to consider and allow them for extension. Further in reply to the Deficiency Memo dated 15.05.2012, the Applicant vide letter dated 19.05.2012 had submitted that they had not received the extension and meanwhile they got instruction from their overseas buyer to export the materials and hence they exported the goods and then submitted the rebate claim. Further they submitted that they had not contravened or violated any provision of Central Excise rule and regulations.



8.3 In respect of Rebate Claim No 8351, 15/2010 dt 24.06.10 of Rs. 2,37,154/-, Government observes that since their buyer had instructed the Applicant to hold the materials till further instructions, the Applicant vide their letter dated 06.12.2010 and 15.12.2010 addressed to the jurisdictional Assistant Commissioner of Central Excise, Division-II Padra, Baroda permission for extension of another six months to export the goods. The manufacturer M/s Elysium Pharmaceutical Ltd. vide their letter dated 23.02.2011 addressed to the Commissioner of Central Excise, Vadodara also requested permission for extension of another six months to export the goods. The Applicant vide their letters dated 14.04.2011 and 17.06.2011 addressed to the Commissioner of Central Excise, Vadodara with reference to the above letters requested the Commissioner extension of time for export for further six months. Further in reply to the Deficiency Memo dated 16.05.2012, the Applicant vide letter dated 19.05.2012 had submitted that they had not received the extension and meanwhile they got instruction from their overseas buyer to export the materials and hence they exported the goods and then submitted the rebate claim. Further they submitted that they had not contravened or violated any provision of Central Excise rule and regulations.

9. Government finds that since their buyer had instructed the Applicant to hold the materials till further instructions, the Applicant had sought permission from the jurisdictional Commissioner of Central Excise for extension of another six months to export the goods however they had not received the permission letter. The export had taken place after six months of issuance of the ARE-1s when the Applicant got instruction from their overseas buyer to export the materials. Government finds that due to circumstances beyond the control of the Applicant, they should not have been deprived of their claim to rebate when they had applied for extension, there was proof of export and payment of duties on the exported goods.

10. In similar case, the Hon'ble High Court at Calcutta in the case of Kosmos Healthcare Pvt. Ltd Vs A.C. of C.Ex. Kolkata-I [2013(297) ELT 345 (Cal.)] held that

*"25. In Cosmonaut Chemicals v. Union of India reported in 2009 (233) E.L.T. 46 (Guj.) a Division Bench of Gujarat High Court held, and rightly, that a claim for rebate filed beyond the stipulated time limit, due to circumstances beyond the control of claimant could not deprive the claimant of his claim to rebate, when there was proof of export.*

*26. In Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise, Chennai reported in 2011 (272) E.L.T. 353 (Mad.), the Madras High Court held that substantive compliance of procedural requirements would be sufficient where factum of export is not in doubt.*

*27. As held by the Supreme Court in Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres reported in 2012 (278) E.L.T. 37 (S.C.), a beneficial notification was required to be given a liberal interpretation. The notification in this case is a beneficial one.*

*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 at ~~above~~.*

11. Government finds that the condition of export within six months is a procedural condition of a technical nature and not a substantive condition. This is also evident from the fact that the Notification itself provides extension of the period for export by Commissioner of Central Excise without any limit and without any reasonable cause shown by an assessee. Hence the delay after that was beyond the control of the Applicant and the delay has not caused any loss of revenue to the Government. Hence the rebate cannot be denied to the Applicant.

12. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the documents submitted by the Applicant after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order and in accordance with law after giving proper opportunity within eight weeks from receipt of this order.

13. In view of the above, Government sets aside the impugned Order-in-Appeal No. US/749/RGD/2012 dated 31.10.2012 ~~passed by the Commissioner~~ of Central Excise (Appeals-II), Mumbai.

12. The Revision Application filed by the Applicant is decided on above terms.

*Shrawan*  
*26/7/21*

(SHRAWAN KUMAR)

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

ORDER No. 253/2021-CX (WZ)/ASRA/Mumbai Dated 26.07.2021

To,

1. M/s Mission Vivacare Ltd.,  
Corporate Office,  
901-A, Raheja Plaza,  
LBS Marg, Ghatkopar(West),  
Mumbai 400 086.
2. M/s Mission Vivacare Ltd.  
54B Drug House, Procter Road,  
Mumbai 400 007.

- Copy to :
1. The Commissioner of GST & CX, Belapur Commissionerte,  
1<sup>st</sup> floor, CGO Complex, Sector 10, CBD Belapur,  
Navi Mumbai 400 614
  2. P.S. to AS (RA), Mumbai.
  - ~~3. Guard file.~~
  4. Spare Copy.