

REGISTERED

SPEED POST



F. No. 195/289/2015-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.....

ORDER NO. ^{266/2018} CX dated ^{25/5} 2018 OF THE GOVERNMENT OF INDIA, PASSED
BY SHRI R.P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of
Central Excise Act, 1944, against the Order-in-Appeal
No. JAL-EXCUS-000-APP-104-15-16 dated
25.06.2015, passed by the Commissioner of Central
Excise (Appeals), Chandigarh.

APPLICANT : M/s. Torrent Pharmaceuticals Ltd.

RESPONDENT : The Commissioner of Central Excise, Chandigarh - I

ORDER

A Revision Application No. 195/289/2015-RA dated 21/09/2015 is filed by M/s Torrent Pharmaceuticals Ltd., village Bhud, Makhnu – Majra, Tehsil Nalagarh, Baddi, District Solan, (hereinafter referred to as applicant) against order in appeal No. JAL-EXCUS-000-APP-104-15-16 dated 25.06.2015, passed by the Commissioner of Central Excise (Appeals), Chandigarh-I, whereby the applicant's appeal filed before the Commissioner (Appeals) against the Order-in-Original has been rejected.

2. The brief facts leading to the present proceedings are that the applicant had filed rebate claims of Rs. 3,09,549/- for the excise duty paid on inputs in terms of Rule 18 of Central Excise Rules, 2002 and Notification No. 21/2004-CE(NT) dated 6/9/2004. These Rebate claims were sanctioned by the jurisdictional Assistant Commissioner vide various Orders-in-Original from time to time. However, during the period from 06.03.2013 to 21.01.2014 the rebate claims sanctioned for amount of Rs.3,09,249/- were treated erroneous and the Assistant Commissioner confirmed the recovery of erroneously sanctioned rebate claims under Section 11A of the Central Excise Act on the ground that they had exported free samples having no commercial value. The applicant filed appeal against Order-in-Original with the Commissioner (Appeals), but it was also rejected vide the above said Order-in-Appeal.

3. The instant revision application has been filed by the applicant mainly on the ground that the market value of exported free samples was more than the amount of rebate claim filed by them, Central Excise duty was also paid on the value of the goods and Notification No. 21/2004-CE(NT) dated 06.09.2004 does not have any condition similar to the condition 2(e) of Notification No. 19/2004CE(NT) dated 06.09.2004 as per which the market price of the goods should not be lesser than amount of rebate of duty. The Order-in-Appeal is also assailed on the ground that their vital plea that Assistant Commissioner could not

review his own sanctioning order has not been considered by the Commissioner(Appeals) at all.

4. Personal Hearing was granted on 05/04/2015 which was attended by Sh. S.J. Vyas, Advocate, on behalf of the applicant and he reiterated the grounds already pleaded in the revision application. He also placed reliance on Vikram Ispat vs. CCE, Mumbai III (2000(120)E.L.T(800)Tribunal-LB)in the CEGAT, Northern Bench, New Delhi in addition to the case laws already cited in the revision application. However, no one appeared for the respondents.

5. The Government has examined the matter and agrees with the applicant that after the sanctioning of the rebate of duty by the jurisdictional Assistant Commissioner, he had become functus officio and could not review his own order to initiate recovery action. The sanctioning order could be reviewed by the jurisdictional Commissioner of Central Excise only and in absence of the same the entire recovery action was vitiated and consequently the Order-in-Original was not legal and proper. Accordingly, the Commissioner(Appeals) has committed an error by ignoring this significant legal point while passing the Order-in-Appeal.

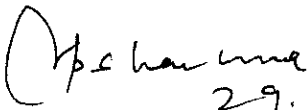
6. Besides above, it is noticed by the Government that the rebate of duty was claimed by the applicant in respect of the inputs used in the export of free samples for the Pharmaceuticals products for which the governing Notification No. is 21/2004 – CE(NT) dated 06.09.2004. Whereas the rebate claims have been dealt with and rejected by the lower authorities with reference to condition 2(e) of Notification No. 19/2004 – CE(NT) dated 06.09.2004 even when it is not applicable for the purpose of examining the admissibility of rebate of duty in respect of inputs. By virtue of Para 5 of Notification No. 21/2004 – CE(NT) the procedures specified in Notification No. 19/2004 – CE(NT) are certainly made applicable to Notification No. 21/2004 – CE(NT), but it is evident from this para itself that the conditions and limitations specified under Para 2 of Notification No. 19/2004 – CE(NT) are not relevant in the context of Notification No. 21/2004 – CE(NT) as the said Para 5 is

conspicuously silent with regard to following of conditions of Notification No. 19/2004 – CE(NT) which are specified at Sl. No. (a) to (h) of Para 2 and procedures are prescribed separately in Para 3. Therefore, while Para 5 of Notification No. 21/2004 – CE(NT) expressly provides for following of procedure laid down in Notification No. 19/2004 – CE(NT), it does not have any reference to the conditions and limitations stipulated in Para 2 of Notification No. 19/2004 – CE(NT) from which it is explicit that the conditions stipulated in Para 2 of Notification No. 19/2004 – CE(NT) including the condition in Para 2(e) as per which the Indian market price of the excisable goods at the time of export should not be less than the amount of rebate of duty claimed is not applicable under Notification No. 21/2004 – CE(NT) and accordingly its application by the lower authorities for rejection of the rebate claims of the applicant is completely erroneous. The Government of India's Order No. {2013(293)E.L.T 137 (GOI)} in the case of M/s. Ranbaxy Laboratory Ltd. is also not found relevant for the present proceedings as in the said case the issue was regarding admissibility of rebate of duty in respect of the exported goods governed by Notification No. 19/2004 - CE(NT) and it was not in respect of inputs to be determined under Notification No. 21/2004 – CE(NT) as is in the present case. Therefore, the Assistant Commissioner as well as the Commissioner (Appeals) have wrongly placed reliance on the above order to confuse the whole matter and deny the rebate of duty to the applicant on erroneous premise. Besides above, the Commissioner (Appeals) has laid lot of stress on Para 1.5 of Part V of chapter 8 of CBEC's Manual to reject the applicant's appeal which provides that the market price of the goods should not be less than rebate amount. But the Government finds enormous substance in the plea of the applicant that the free samples were free only for the foreign customers and not from the Indian market point of view. It is corroborated by the fact that they had paid the Central Excise duty by taking a certain value and the duty paid thereon was accepted by the department also. So even when no consideration was received from the foreigner buyers in respect of such free samples, there is no basis in saying that the exported samples did not have any value in the Indian market. Further the said condition at 2(e) of Notification No. 19/2004 – CE(NT) does not

also provide that the "foreign remittance" in respect of the exported goods should not be lesser than the amount of rebate of duty claimed and it only says that the market value of exported goods should not be lesser than the rebate of duty. Moreover, to allay any confusion in this regard, the condition in Para 2(e) has been modified from 01.03.2016 to make it further clear that the "Indian market price of the excisable goods at the time of exportation should not be lesser than the amount of rebate of duty." Therefore, the Indian market value of the exported goods is only relevant for Notification No. 19/2004 – CE(NT) and not the foreign remittance. Since Indian market price of the exported free samples was more than the amount of rebate in this case, the condition specified in Para 2(e) of Notification No. 19/2004 – CE(NT) is not attracted in this case.

7. Considering the above discussed factual and legal aspect of this case, the Government is convinced that the rebate of duty under Notification No.21/2004 – CE(NT) has been erroneously refused to the applicant by the lower authorities and therefore the Order-In-Appeal deserves to be set aside.

8. Accordingly, the Order-In-Appeal is set aside and the revision application is allowed.


29.5.18
(R. P. Sharma)

Additional Secretary to the Government of India

M/s. Torrent Pharmaceuticals Ltd.,
Village Bhud, Makhnu – Majra,
Tehsil – Nalagarh, Baddi, District:
Solan, Himachal Pradesh.

266/2018.
ORDER NO. CX dated 29/5/2018

Copy to:-

1. The Commissioner of Central Excise, Chandigarh – I, C.R. Building, Plot No. 19, Sector-17 C, Chandigarh – 160 017.
2. The Commissioner of Central Excise(Appeals), Chandigarh – I, C.R. Building, Plot No. 19, Sector – 17C, Chandigarh – 160 017.
3. The Assistant Commissioner of Central Excise, Division Shimla, Chandigarh – I Out House No. 2, Near TCP, MLA Crossing, Boileaugans, Shimla-5 (H.P.)
4. Mr. S.J. Vyas, Advocate, C- 4, Jay Apartments, Opp. Azad Society, Ambawadi, Ahmedabad – 380 015.
5. P.S. to A.S.
6. Guard File ✓
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ATTESTED

(Debjit Banerjee)
Sr. Technical Officer(R.A. Unit)