

REGISTERED  
SPEED POST

F.No. 195/608/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
3NEW DELHI-110 066

Date of Issue..... 15/1/13

ORDER NO. 28 /13-Cx DATED 09-01-2013 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 : ORDER IN REVISION APPLICATION FILED,  
UNDER SECTION 35 EE OF THE CENTRAL EXCISE,  
1944 AGAINST THE ORDER-IN-APPEAL No.  
20-CE/MRT-I/2010-11 dated 28.04.2011  
passed by the Commissioner of Customs & Central  
Excise, (Appeals). Meerut-I

APPLICANT : M/s Vee Excel Drugs and Pharmaceuticals Pvt.Ltd.,  
Ghaziabad (UP).

RESPONDENT : Commissioner of Central Excise, Meerut-I,

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### Order

This revision application is filed by M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. against the order-in-appeal No. 20-CE/MRT-I/2010-11 dated 28.04.2011 passed by Commissioner of Customs & Central Excise (Appeal), Meerut-I with respect to Order-in-Original passed by the Deputy Commissioner, Central Excise Division, Dehradun.

2. Brief facts of the case are that the applicant filed a rebate claim on inputs used in the manufacture of export goods under Rule 18 of Central Excise Rules, 2002 on the grounds that M/s Akums Drug & Pharmaceuticals Ltd., Hardwar had manufactured 'medicines' on their behalf under the provisions of Notification No. 21/2004 -CE(NT) dated 06.09.2004. The export in question was done under the cover of various AREs-2. A Show Cause Notice dated 01-04-2010 was issued to the applicants to reject the rebate claim filed by them on the grounds that they neither filed the declaration with the proper officer nor obtained the requisite permission as required under the notification and did not produce the relevant records pertaining to procurement of the inputs. The rebate claim was also alleged to be denied due to the reason that the rebate claim could not be allowed to the merchant exporter and there was no certificate of self-sealing on ARE-2's. Other discrepancies were also alleged in the Show Cause Notice. The adjudicating authority rejected the rebate claim on the grounds as were mentioned in the Show Cause Notice.

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

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

4.1 Para-8.2 of Chapter-8 of the said CBEC manual has not been quoted in full but only partially by the Commissioner. The said para 8.2 reads as follows, "Rebate inputs stage duty shall be allowed to manufacturer (Processor), as the case may,

where such inputs are used in the manufacture/processing of export goods and cleared directly from the factory of manufacturer/processor,. The manufacturer/processor may export the goods directly himself or through Merchant Exporter. Where the goods are exported by merchant exporter, his name shall be mentioned on ARE-2 and other conditions followed. From the aforesaid CBEC instructions it is unambiguously clear that goods can be exported through Merchant Exporter. When goods are exported by merchant exporter, he becomes the exporter and entitled to the benefits. The Commissioner instead of accepting our ground taken in appeal has read and quoted incomplete para of the manual and rejected our appeal.

4.2 The applicant further contended that once a declaration as required is filed giving input output ratio, further filing of the declaration is not required, unless there is change in input output ratio. The Notification No. 21/2004 –CE(NT) dated 06.09.2001 as well as para 3.5 of Chapter 8 of CBEC manual mandates intimation of any change in input output norms. The applicant bonafidely believed that declaration before each export is not required. More so when the item under export is pharmaceutical products approved by Drug Controller and input output ratio will not change irrespective of the brand. So far as the observation of the Commissioner that it is mandatory for the exporter to obtain permission from proper officer for input output ratio, the applicant contends that the same had been obtained vide permission granted under letter C.No. – V-CE (18) Ref/Akums/57/08/13913 dt. 29-12-2008 and V-CE (18) Ref/Akums/57/08 dt. 20-08-2008.

4.3 Minor procedural infirmities are not allowed to come in the way of grant of export benefits. This has been repeatedly emphasized by the Board and the Government has consistently come to the rescue of the Exporter. Reliance in this regards is placed on the following case laws:

- i) 2006 (200) ELT 171 (GOI) Vs. Harison Chemicals-Held-Substantial benefit of rebate not to be denied on procedural infractions.
- ii) 2006 (197) ELT 110 (T)-Home care (I) Pvt. Ltd. Vs CCE
- iii) 1995 (77) ELT 511 (SC)- Formica India Vs. CCE.

5. Personal hearing scheduled in the case on 06.12.2012 was attended by Shri N.K.Sharma, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent department.
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.
7. Government notes that the applicant a merchant exporter filed rebate claim of inputs used in manufacture of final export goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004 -CE(NT) dated 06.09.2004. A Show Cause Notice dated 01-04-2010 was issued to the applicants to reject the rebate claim filed by them on the grounds that they neither filed the declaration with the proper officer nor obtained the requisite permission as required under the notification and did not produce the relevant records pertaining to procurement of the inputs. The rebate claim was also alleged to be denied due to the reason that the rebate claim could not be allowed to the merchant exporter. The adjudicating authority rejected the said rebate claims. Commissioner (Appeals) upheld impugned Order-in-Original. Applicant has filed this Revision Application on grounds mentioned in para (4) above.
8. Government notes that before proceeding further to discuss the issue on merit it is necessary to decide whether input rebate claim is admissible to merchant exporter. In this regard the instructions contained in para 8.2 of Part V Chapter 8 of CBEC Excise Manual of Supplementary Instructions, are reproduced below:-

*"8.2 Rebate of input stage duty shall be allowed to manufacturer (Processor)-Exporter, as the case may be, where such inputs are used in the manufacture/processing of export goods and cleared directly from the factory of manufacture/processor. The manufacturer/processor may export the goods directly himself or through merchant exporter where the goods are exported by merchant-exporter, his name shall be mentioned on ARE-2 and other conditions prescribed in Notification No. 21/2004 -CE(NT) dated 06.09.2004 should be fulfilled."*

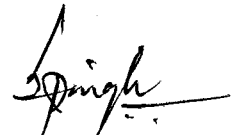
The plain reading of said instructions makes it clear that rebate of input stage duty shall be allowed to manufacturer(processor) exporter where such inputs are used in the manufacturer/processing of export goods and cleared directly from the factory of manufacture/processor. Further there is no bar on export of goods through merchant exporter but such rebate is to be granted only to manufacturer of exported goods. In the instant case merchant exporter (applicant) has claimed the input stage rebate which is contrary of above said instructions and as such applicant is not entitled for the impugned rebate claims.

9. Government notes that vide Show Cause Notice the applicant was requested to submit the records/documents pertaining to the inputs/finished goods against which rebate was claimed. But, they failed to submit the said records. This was one of the grounds for rejection of rebate claim. In the absence of said records it can not established that duty paid inputs were used in the manufacture of exported goods. In this case, the substantial condition of use of duty paid inputs in the manufacture of exported goods is not satisfied. The case laws cited by applicant relate to condonation of procedural lapses of technical nature. So the said case law cannot be made applicable to this case.

10. In view of above position, Government do not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. The revision application is rejected being devoid of merit.

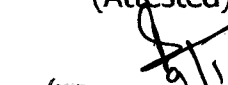
12. So, ordered.

  
(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Vee Excel Drugs and Pharmaceuticals Pvt. Ltd.,  
703-705, Devika Tower, Chandra Nagar, Ghaziabad (UP),

(Attested)

  
(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

Order No.28 /13-Cx dated 9-1-2013

Copy to:

1. The Commissioner of Customs & Central Excise, Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005.
2. The Commissioner (Appeals), Customs & Central Excise, Meerut-I, Mangal Pandey Nagar, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005 (UP)
3. The Assistant/Deputy Commissioner of Central Excise, Division, Dehradun, (UP)
4. Shri N.K. Sharma, advocate 393, Sector-21D, Faridabad.
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)