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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
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Mumbai- 400 005

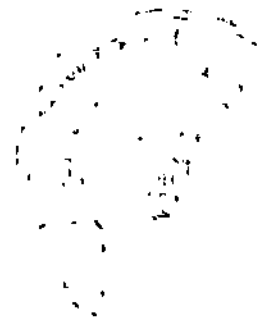
F.No.195/596/2012-RA/4043 --Date of Issue 27-08-2020

ORDER NO.293 /2020-CX (WZ)/ASRA/MUMBAI DATED 04.03.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Mission Vivacare Ltd.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
US/185/RGD/2012 dated 21.03.2012 passed by the
Commissioner of Central Excise (Appeals-II), Mumbai.



ORDER

This Revision Application is filed by the 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 the Order-in-Appeal No. US/185/RGD/2012 dated 21.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

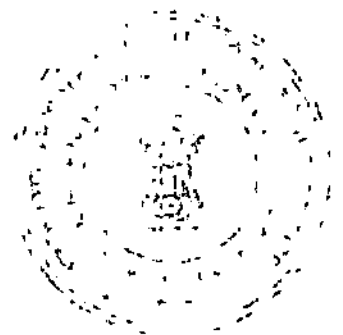
2. The issue in brief is that the Applicant, a merchant exporter, engaged in the export business of pharmaceutical formulations falling under Chapter 30. The Applicant had removed the goods from their manufacturer M/s Brassica Phamaceuticals & Chemicals, Tarapur premises under ARE-1s and then filed 04 rebate claims total amounting to Rs 74,526/-. The jurisdictional Superintendent in the duty payment verification report had reported that the ARE-1s mentioned are not pertaining to the goods exported by the applicant and duty debited by the manufacturing in RG-23 Part-II is also not relating to goods exported by the Applicant. Hence the Applicant was issued deficiency memo cum Show Cause Notice dated 13.04.2011. The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 702/11-12/DC (Rebate)/Raigad dated 05.07.2011 rejected the rebate claims. Aggrieved the Applicant then filed an appeal with the Commissioner of Central Excise (Appeals-II), Mumbai. The Commissioner (Appeals) vide Order-in-Appeal No. US/185/RGD/2012 dated 21.03.2012 upheld the Order-in-Original dated 05.07.2011 and the Applicant's appeal was rejected.

3. Being aggrieved, the Applicant then filed the current Revision Application on the grounds that the Applicant had claimed the rebate claims on 07.06.2010 and 24.06.2010. The jurisdictional Superintendent had vide letter dated 03.03.2011 stated that the ARE-1s are not pertaining to the goods exported by the Applicant and the duty debited by the manufacturer under RG23A Part-II entry nos are also relating to goods exported by the



Applicant. The Applicant had vide their letter dated 11.03.2011 addressed to the Superintendent(Rebate) stated that due to clerical mistake from the manufacturers end, the ARE-1s do not tally with each other but all the details mentioned in the ARE-1, Excise Invoice, Shipping Bill, Custom Invoice/Packing list tally with each other . So it is clear that the mistake is a clerical in the ARE-1 No. and had not done any kind of fraud and breach any provisions of rules and regulations. In the mean time, the manufacturer vide their letter dated 19.04.2011 addressed to the jurisdictional Range Superintendent stating that after issuing original and duplicate copy of ARE-1 for export, they had changed the Serial No. of ARE-1 in the Triplicate Copy, quadruplicate and other copies of the said ARE-1s. This happened due to clerical mistake and requested to do necessary correspondence with the Superintendent(Rebate), Raigad-so-that-the-claims could be sanctioned. The jurisdictional Range Superintendent vide letter dated 20.04.2011 addressed to the manufacturer and copy to the Superintendent(Rebate), Raigad submitted the duty verification report stating that the facts had been verified from the ARE-1 Nos and other particulars such as Invoice No., Quantity, Description, RG-23 Debit of goods exported in the Are-1s and the same are tallied with the invoices, and the mistake appears genuine. Further, in the claim No. 5130 dated 07.06.2010 for ARE-1 No. 09/10-11 dated 27.04.2010, there is no difference in the ARE-1 No., and all the other particulars are tally with each other, but the said claim also rejected and the same was also observed by the Commissioner(Appeals). When there is no dispute about the impugned goods have been exported and rebate claim is filed within the stipulate time, the correction made in the ARE-1 is to be treated as a procedural infraction or technical mistake. The Applicant prayed that the Order-in-Appeal be set aside and their rebate claim of Rs. 74,526/- be allowed with consequential relief.

4. A personal hearing in the case was held on 14.12.2017, 09.02.2018, and 10.10.2019. However neither the Applicant nor the Respondent attended the hearing. Hence the case is being decided exparte on merit.



5. 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.

6. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement.

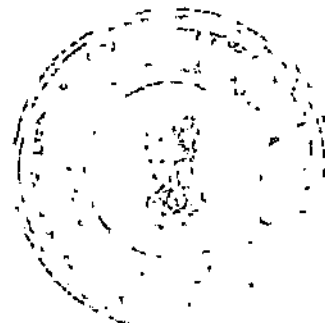
7. On perusal of the records, the Applicant had claimed 04 rebate claims ~~total amounting to Rs.-74,526/-~~ and the jurisdictional Superintendent in the duty payment verification report dated 22.09.2010 & 07.04.2011 had reported that the ARE-1s mentioned do not pertain to the goods exported by the applicant. The Applicant had vide their letter dated 11.03.2011 addressed to the Superintendent(Rebate), Raigad had submitted that

"....Further we clarify that due to clerical and typographical mistake done by our loan licensee the ARE-1 Nos are not matching with each othr but all the details mentioned in the shipping bill, Inv/Packing list & ARE-1, Central Excise invoice no shown in ARE-1 as well as debited duty amount is tally with each other. We have not done any type of fraud and breach any provisions of central excise act, rules and regulations.

Sir, please condoned the clerical and typographical mistake and sanctioned our Rebate claims...."

Further the manufacturer M/s Brassica Phamaceuticals & Chemicals, Tarapur vide their letter dated 19.04.2011 addressed to the Supdt. of C.Ex., Range-IV, Div. Boisar-II, Comm.-Thane-II had submitted that

"We had exported pharmaceutical goods following under chapter 30 of C.Ex tariff vide ARE-1 -06/2010-11, 09/2010-11, 08/2010-11, 102/2009-10. However our staff to prepare ARE-1 after handling are original & duplicate copy of ARE-1 to custom office through CHA made changes at sr.no. of ARE-1



on triplicate & quadruplicate & other copy of all the said ARE-1. The correct sr.no. of ARE-1 may be read as under

Wrong of ARE1 shown on original & duplicate copy	Correct of Are1 shown on Triplicate & other copy	Invoice No.	Date	RG 23A Part II No
05/2010-11	06/2010-11	13	22.04.10	107/05
07/2010-11	08/2010-11	21	25.04.10	132/06
09/2010-11	09/2010-11	22	27.04.10	144/06
101/2009-10	102/2009-11	165	05.02.10	2140/160

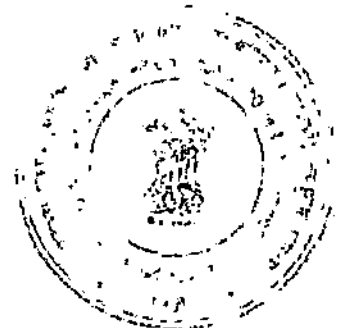
After certified copy from custom officer when the same were submitting our exporter to excise office Raigad, wrote letter through our office for confirming the fact of export. However since there was different in ARE1 No our office inform that ARE1 no-are-not-tally-for this reason the rebate claim to the export is not sanction. We request you to inform the above stated realistic position to Supdt. C.Excise Raigad to enable him to sanction the rebate claim. We also desire to point out that showing in correct no. on ARE1 was merely clerical mistake happen through our side & there was no intention of any fraud or declining to government office.

You are therefore request to condone the mistake.”

As per records, on receipt of M/s Brassica Phamaceuticals & Chemicals, Tarapur their letter dated 19.04.2011, the jurisdictional Supdt of Central Excise, Range-IV, Division Boisar-II, Thane-II vide letter F.No. C.Ex./R-IV/BSR-II/Brassica/10/195 dated 20.04.2011 had again submitted the verification report stating -

“The said facts has been verified from the ARE-1 No. 06/2010 11, 08/2010-11, 09/2010-11, 102/2009-10.

As per your claim we have verified the other particulars such as Invoice No., Quantity, Description, RG-23 Debit of goods exported in ARE-1 06/2010-11, 08/2010-11, 09/2010-11, 102/2009-10 and the same are found to be tallied with the invoices, the mistake appears genuine.



Government finds the correlation of duty paid goods and export thereof stands established by tallying of particulars to excise documents and export documents, which is verified/certified by relevant excise/customs authorities, hence errors seen to be typographical.

8. Government observes that in the light of the report dated 20.04.2011, the deficiencies observed by the first Appellate authority are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural-lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

9. In view of the above, Government finds that the Applicant's rebate claim cannot be held inadmissible on the above ground. Hence Government set aside the impugned Order-in-Appeal No. US/185/RGD/2012 dated



21.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai. The rebate claim is allowed.

10. The Revision Application is allowed.

11. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 299/2020-CX (WZ)/ASRA/Mumbai DATED 04.03.2020.

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

