

SPEED POST



**F. No. 195/102-103/18—R.A.
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. 23/2/21.....

Order No. 30-31 / 2021-CX dated 23-02-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional 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 Orders-in-Appeal No. CHD-EXCUS-001-APP-26-27-18-19 dated 17.04.2018 passed by Commissioner of GST (Appeals), Chandigarh.

Applicant: M/s. Torrent Pharmaceuticals Ltd., Shimla

Respondent: The Commissioner of GST, Shimla

ORDER

Two Revision Applications Nos. 195/102-103/2018—R.A. dated 22.05.2018 are filed by M/s. Torrent Pharmaceuticals Ltd., Shimla (hereinafter referred to as applicant) against Order-in-Appeal No. CHD-EXCUS-001-APP-26-27-18-19 dated 17.04.2018 passed by Commissioner of Central Goods & Service Tax(Appeals), Chandigarh wherein the applicant's appeals against Order-in-Original No. 1007-1008/AC/R/Baddi/2016 dated 02.09.2016, passed by the Assistant Commissioner, Central Goods & Service Tax, Baddi, have been rejected.

2. The brief facts leading to the present proceedings are that the applicant had filed two input stage rebate claims, totally amounting to Rs. 21,902/-, under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notification No. 21/2004-CE (NT) dated 06.09.2004. These rebate claims were rejected by the original authority on the ground that the applicant had exported free samples having no market value and, as per Para 1.5 of Part V of Chapter 8 of CBEC Excise Manual of Supplementary Instructions, no rebate can be granted if the market price of the goods exported is less than the rebate amount. Aggrieved, the applicant filed appeals before Commissioner (Appeals) which were rejected. The revision applications have been filed mainly on the ground that the applicant had exported goods under notification no. 21/2004 which does not have any such condition on which the rebate claims have been rejected.

3. Personal hearing was held on 22.02.2021 in virtual mode. Sh. S. J. Vyas, Advocate and Sh. Vinod Thakur, Manager, appeared for the applicant and reiterated the contents of the revision application. Sh Vyas highlighted that:

(i) they had requested for rebate on the inputs used in the manufacture of export goods under Rule 18 read with notification no. 21/2004-CE (NT) dated 06.09.2004 whereas their claims have been rejected on the basis of non-compliance of condition of notification no. 19/2004-CE (NT) which govern rebate on final products.


(ii) the Government has in their own case decided the matter in their favour vide Order No. 532-598/2018-CX dated 03/20/2018.

Sh. Vyas, accordingly, requested for the revision applications to be allowed. No one appeared for the respondents and no request for adjournment has been received. Hence, the matter is being taken up for decision on the basis of facts available on record.

4 The Government has examined the matter. It is not in dispute that the rebate has been claimed by the applicant on the inputs used in the manufacture of the export goods under Notification no. 21/2004-CE (NT) dated 06.09.2004. This notification specifically deals with rebate on the “excisable goods used in the manufacture or processing of export goods”. There is no condition in this notification requiring that the market price of the excisable goods at the time of exportation should not be less than the amount of rebate claimed. Notification no. 19/2004-CE (NT) dated 06.09.2004 has a condition 2(e) to this effect, which is not applicable in this case. Further, the samples are “free” only for export purposes. It is not disputed that these

samples were cleared from the factory of the applicant on payment of duty on the value of Rs. 6,59,104/- and Rs. 9,25,082/-. As such the market price of the goods is much higher than the rebate claimed. Thus, there is no violation of even Para 1.5 of Part V of Chapter 8 of CBIC's Central Excise Manual of Supplementary Instructions in this case. The Government has taken a similar view in the applicant's own case, vide Order No. 532-598/2018-Cx dated 03.10.2018.

5. In view of the above, the Government finds that the impugned Order-in-Appeal cannot be sustained. The revision applications are allowed with consequential relief.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Torrent Pharmaceuticals Ltd.
Village Bhud & Makhnu,
Tehsil Baddi, Distt. Shimla,
Himachal Pradesh

G.O.I. Order No. 30-31 /21-Cx dated 23-2-2021

Copy to:-

1. Commissioner of CGST, Shimla.
2. Commissioner of CGST (Appeals), Chandigarh-I.
3. Sh. S.J. Vyas, Advocate.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED

(Ashish Tiwari)
Assistant Commissioner (R.A.)