

REGISTERED SPEED POST



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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/623/12-RA / 3998

Date of Issue: 26.08.2020

ORDER NO. 308/2020-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. Aventis Pharma Ltd., Mumbai.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/216/RGD/2012 dated 30.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



ORDER

This revision application has been filed by M/s. Aventis Pharma Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/216/RGD/2012 dated 30.03.2012 passed by the Commissioner of Central Excise (Appeals- II), Mumbai.

2. Brief facts of the case are that the applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 amounting to Rs.10,73,361/- (Rupees Ten Lakh Seventy Three Thousand Three Hundred Sixty One only) . The original authority viz. Deputy Commissioner, Central Excise (Rebate), Raigad sanctioned the said rebate claims vide Order in Original No. 485/11-12/DC(Rebate)/ Raigad dated 27.06.2011.

3. ~~Being aggrieved by the Order-in-Original, Department filed appeal before the~~ Commissioner (Appeals) on the ground that the applicant exported the goods by availing benefit under Notification No. 41/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(c) of ARE-1 79/04.9.2010, 91/20.09.2010 and 130/18.12.2010 amounting to Rs.4,76,312/- (Rupees Four Lakh Seventy Six Thousand Three Hundred and Twelve only). Under the said notification, it was mandatory to clear goods for export under Bond / Letter of Undertaking, therefore rebate to the tune of Rs. 4,76,312/- was wrongly sanctioned. The Commissioner (Appeals) vide Order in Appeal No. US/216/RGD/2012 dated 30.03.2012 set aside Order in Original No. 485/11-12/DC(Rebate)/ Raigad dated 27.06.2011 and allowed the Revenue's Appeal with the following observation:

The ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002. The declaration given in the ARE-1's are required to be filled in so as to ascertain whether specified benefits have been availed by the exporter or not. This is a statutory requirement which has not been complied with by the respondents. The respondents contend that the declaration made on an ARE-1 may be rectified as a clerical error. I find that ARE-1 is an assessment document. After self-assessing the said document, the respondents presented the same to the proper officer. Once the said document is assessed by the respondents, it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. In view of this the order to the tune of Rs.4,76,312/- has to be set aside.



4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the following grounds:-

- 4.1 They have exported the goods u/r 18 of Central Excise Rules, 2002 r/w Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 and fulfilled all the conditions of the said notification.
- 4.2 They have not availed the benefit of Notification No.43/2001 dated 26.6.2001 and marking off was mistakenly done in Sr. No. 3 (c) of the said ARE-1s, i.e. the word "without availing facility" was struck out instead of "availing facility". That wrongly striking out one word at Sr.No.3(c) of the said ARE-1s was merely an inadvertent mistake on their part as the goods were exported under Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 under Rule 18 supra.
- 4.3 As they have filed Form ARE-1 and not ARE-2 Form, itself substantiate that the they have not availed the benefit of the said Notification. Striking out the word "availing facility", instead of "without availing facility" in the Sr. No. 3(c) of the said ARE-1s is merely an inadvertent mistake and procedural lapse and therefore same should be condoned. The GOI has consistently held in the following cases that mistake or mismatch in the ARE-1 is condonable and has allowed the rebate:

Audler Fasteners 2007(216) E.L.T. 465 (GOI) and
Cotfab Exports 2006 (205) E.L.T. 1027 (GOI).

5. A Personal hearing was held in this case on 05.11.2019 and Shri Dhanpati Shah, Consultant appeared for hearing on behalf of the applicant and reiterated the grounds of Revisionary Application and also submitted that declaration at Sr. No. 3 (c) of the ARE-1s was a technical error.

6. 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 and a copy of Fresh Certificate of Incorporation dated 11.05.2012 issued by Registrar of Companies Maharashtra, Mumbai consequent upon change of name of the applicant from M/s Aventis Pharma Limited to M/s Sanofi India Limited.

7. Government observes that the applicant exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has contended that they have not availed the benefit of the Notification No.43/2001 dated 26.6.2001 and



striking out the word "without availing facility", instead of "availing facility" in the Sr. No. 3(c) of the said ARE-1s was merely an inadvertent mistake. Further, the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and also that range Superintendent has confirmed the duty payment.

8. In this regard Government places its reliance on GOI in Revision Order No. 32/2016 – CX Dated 04.02.2016 in the case of M/s Mahavir Synthesis Pvt Ltd. Vs Commissioner of Central Excise, Raigad, wherein while allowing application filed by the applicant the Revisionary authority observed as under :-

On perusal of copy of relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicant has exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also observed that triplicate copy of ARE-1 has been endorsed by the Central Excise officer which confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.01 cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force-in contention of applicant that they have by mistake ticked in ARE-1 form declaration and they have not availed benefit of Notification 21/04-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant.

Government notes that identical issue of ticking wrong declaration in ARE-1 has been decided by GOI in case of M/s. Socomed Pharma Ltd. vide Revision Order



No. 154-157/2014-CX dated 21.04.2014 [2014 (314) ELT 949 (GOI)] wherein it has been observed that mere ticking of wrong declaration may not be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established.

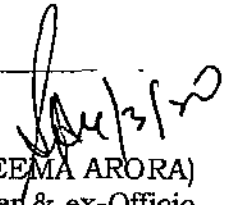
10. Government finds that rationale of aforesaid GOI orders is squarely applicable to the present case also. Further, it is now a settled law that while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and 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 the manufacture of goods, the payment of duty on the same and its subsequent export, which in the present case is beyond any doubt.

As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL - 1998 (99) E.L.T. 387 (Tri.), Alfa Garments - 1996 (86) E.L.T. 600 (Tri), Alma Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

11. In view of the foregoing discussion, Government sets aside the impugned Order-in-Appeal No.US/216/RGD/2012 dated 30.03.2012.

12. Revision Application thus succeeds in the above terms.

13. So ordered.


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

ORDER No.308/2020-CX (WZ) /ASRA/Mumbai DATED 04.03.2020

To,
M/s. Sanofi India Ltd. (Previously known as M/s Aventis Pharma Ltd.),
Sanofi House, CTS No. 117 -B,
L&T Business Park Saki Vihar Road,
Powai, Mumbai- 400 072



ATTESTED

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

Copy to:

1. The Commissioner of Central Goods & Service Tax, Belapur,
CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614,
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th
Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex,
Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file,
6. Spare Copy.

