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**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, Cuffe Parade,
Mumbai- 400 005

F. No.195/167/17-RA

14764

Date of Issue: 21.07.2023

ORDER NO. 327/2023-CX (WZ) /ASRA/Mumbai DATED 18.07.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

- Applicant : M/s Watson Pharma Pvt. Limited,
21-22, Kalpataru Square, Kondivita Lane,
Off Andheri Kurla Road, Andheri (East),
Mumbai - 400 059.
- Respondent : Commissioner of CGST & Central Excise, Mumbai East,
9th floor, Lotus Infocentre, Parel East,
Mumbai - 400 012.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No.SK/15/M-I/2017 dated 30.01.2017 passed by the
Commissioner (Appeals), Central Excise, Mumbai - I.

requested to allow the application. He lastly requested one week's time to make additional submissions. The additional submissions were made vide letter dated 22.03.2023 wherein they clarified as to why the judgment of the Hon'ble Supreme Court in the case of M/s Sandoz P. Limited [2022 (379) ELT 279 (SC)] was not applicable to the instant case.

5. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Appeal.

6. Government notes that the present case involves a total of six ARE-1s wherein the rebate claimed by the applicant has been rejected by the Commissioner (Appeals) for different reasons. Government notes that in the case of ARE-1 No.900000027 dated 19.02.2015 rebate was denied for the following reasons: -

- The description of the product in the ARE-1 and the corresponding Excise Invoice did not tally;
- The number and date of the flight indicated in the Shipping Bill and that appearing in the Airway Bill was different;
- The Excise Invoices indicated in Form 'C' submitted by the applicant were different from the Invoices indicated in the other documents inasmuch as they had different numbers and dates;

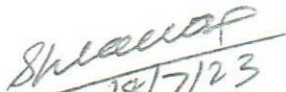
Government has examined these objections raised vis-à-vis the submissions made by the applicant. Government finds that the Commissioner (Appeals) has observed that the said ARE-1 mentioned the product as 'Prilocaine BP/EP', whereas the other corresponding documents, including the Excise Invoice indicated the product as 'Prilocaine USP' and has held that these cannot be same goods. The applicant, in their defense, have submitted that the same is a clerical error. Government finds force in the findings of the Commissioner (Appeals) on this count as the composition, quality, strength and purity of these products are designed to meet the standards set forth by different Pharmacopoeias and a product by the same name but adhering to standards set by different pharmacopoeias, cannot be said to be same. The submission of the applicant that the same was a clerical error borders on

being flippant and unconvincing, particularly in light of the fact that no action appears to have been taken to rectify this error, if it really was one, as claimed by them. As regards the flight number and date being different in the Shipping Bill and Airway Bill, the explanation of the applicant that the Airway Bill had a tentative flight number allotted at the time booking space and hence differed from the actual flight number indicated in the Shipping Bill sounds unconvincing, as in such event too it was not beyond the applicant to have the error corrected on the documents issued by the Shipping agency. The landing certificate sought to be relied upon by the applicant will not come to their rescue as the identity of the consignment that left the country is itself not free from doubt. Thus, Government finds force in the objection raised by the Commissioner (Appeals) on this count. Further, even the Form 'C' which summarized the Central Excise Invoices covering the goods in question were found to have numbers and dates which were different from that in the other related documents, which the applicant once again claims to be a typographical error. Government notes that this reason would be acceptable if the all the other documents were in order, which is not true in this case. Given the above, Government notes that there are too many discrepancies/inconsistencies in the documents furnished by the applicant for claiming rebate and finds that they have failed to establish that the goods on which duty was paid were the goods that were actually exported. Thus, Government finds that the decision of the Commissioner (Appeals) to reject the rebate pertaining to ARE-1 No.900000027 dated 19.02.2015 to be proper and legal and upholds this portion of the impugned Order-in-Appeal.

7. Further, Government notes that in the case of rest of the four ARE-1s bearing Nos. Nos.900000023, 900000025, 900000026, and 900000001 dated 03.02.2015, 13.02.2015, 19.02.2015 and 08.04.2016, respectively, rebate was denied as the excise duty mentioned in the ARE-1s did not tally with that mentioned in the Excise Invoices. In these cases, Government finds force in the submissions of the applicant that these Invoices were issued by a unit which is an EOU and hence by virtue of being an EOU, the duty paid by them for clearances to the DTA also included the component of Customs duty, as required by law. Government has examined the invoices in question issued by the EOU unit and finds this submission of the

applicant to be correct. Government also finds that the rebate claimed is restricted to the CVD portion of the total duty paid. Thus, Government finds that the decision of the Commissioner (Appeals) to reject the rebate in these cases to be incorrect and accordingly sets aside this portion of the impugned Order-in-Appeal. In view of the above, Government holds that the rebate claimed by the applicant with respect to these four ARE-1s is proper and that they are eligible to the rebate so claimed.

8. The Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 327/2023-CX (WZ) /ASRA/Mumbai dated 18.07.2023

To,

M/s Watson Pharma Pvt. Limited,
21-22, Kalpataru Square, Kondivita Lane,
Off Andheri Kurla Road, Andheri (East),
Mumbai - 400 059.

Copy to:

1. Commissioner of CGST & Central Excise, Mumbai East,
9th floor, Lotus Infocentre, Parel East, Mumbai - 400 012.
2. Commissioner of Central Excise (Appeals), Mumbai - I,
Meher Building, Dadi Seth Lane, Chowpatty, Mumbai - 400 007.
3. M/s S.S. Gupta, Chartered Accountant, 1015, 10th floor, Topiwala
Compound, Near Railway Station, Goregaon (W), Mumbai - 400 104.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.