

F.No.195/128/17-RA

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  
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F. NO. F.No.195/128/17-RA /5663

Date of Issue: 11.12.19

ORDER NO. 342/2019-CX (WZ) /ASRA/Mumbai DATED 10.12.2019 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 Alembic Pharmaceuticals Limited, , Vadodara.

Respondent : Commissioner, Central Excise, Customs and  
Service Tax, Vadodara-II.

Subject : Revision Application filed under Section 35EE of the Central Excise  
Act, 1944 against Order-in-Appeal No. PJ/24/VDR-II/2013-14  
dated 11.04.2013 passed by the Commissioner (Appeals) Central  
Excise, Customs & Service Tax, Vadodara.

ORDER

This Revision Application has been filed by M/s Alembic Pharmaceuticals Limited, Vadodara (hereinafter referred to as "the applicant") against Order-in-Appeal No. PJ/24/VDR-II/2013-14 dated 11.04.2013 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Vadodara.

2. The brief facts of the case is that the Order-in-Appeal No. PJ/24/VDR-II/2013-14 dated 11.04.2013 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Vadodara were regularly exporting the goods and claiming rebate under rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. dtd. 06.09.2004. In the instant case, the applicant claimed that they had filed six rebate claims amounting to Rs.17,81,396/- (Rupees Seventeen Lakh Eighty One Thousand Three Hundred Ninty Six only) with the Divisional Assistant Commissioner on 07.04.2011. However, the Divisional Superintendent reported that these six rebate claim files were not entered in their concerned rebate register and inward register. The said rebate claims were lying in room no. 322 and they were bearing office stamp dated 07.04.2011 with no initial of any divisional staff. Therefore, the applicant was issued a show cause notice dated 05.01.2012 proposing to reject the said rebate claims. Thereafter, vide Order in Original No. Div/Wag/Adj/48/Dem/AC/11-12 dated 31.03.2012 the Assistant Commissioner, Central Excise and Customs, Waghoda Division (original authority) held that all the six rebate claims filed by the applicant on 14.11.2011 have been filed after the expiry of one year from the relevant date and hence are time barred.

3. Being aggrieved by the above mentioned Order-in-Original the applicant filed an Appeal before the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara. The Commissioner (Appeals) while rejecting the appeal of the applicant and upholding the Order in Original No. Div/Wag/Adj/48/Dem/ AC/1-12 dated 31.03.2012, vide Order-in-Appeal No. PJ/24/VDR-II/2013-14 dated 11.04.2013 observed as under :

5.4 *In view of the above discussion, I find that these six rebate claims files cannot be considered as filed on the date mentioned in dated acknowledgement stamp on 07.04.2011 and should be treated as filed when found lying in the division office on 14.11.2011 during search of the division office in the presence of authorized signatory of the appellant.*

*These six rebate claims are time barred considering the date of filing of rebate claims as 14.11.2011.*

4. Being aggrieved by the afore mentioned Order in Appeal the applicant has filed the instant revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the grounds mentioned therein:

5. A personal hearing held on 03.09.2019 was attended by Shri Saurabh Dixit, Advocate and Shri Sunil Jagtiani, AGM, Taxation on behalf of the respondent. They filed additional written submissions alongwith case laws. They iterated that six rebate claims were found with the department, yet Show cause Notice was issued to them and vide No. Div/Wag/Adj/48/Dem/\_AC/1-12 dated 31.03.2012 the said rebate claims were returned back to them. They also relied upon case laws of STP Ltd. [2016 (331) E.L.T. 151 (Tri. - Mumbai)] and Orient Craft Ltd. [2011 (22) S.T.R. 193 (Tri. - Del.)]

6. In their written submissions filed on the date of personal hearing, the applicant contended as under:-

6.1 At the outset this is to clarify that on account of de-merger of the portion of business, including that of the present Applicant, the name of Applicant's company has changed from M/s. Alembic Limited to M/s. Alembic Pharmaceuticals Limited. For ready reference a copy of Memorandum and Articles of Association as well as Order of the Hon'ble High Court Order are annexed hereto.

6.2 They had filed six (6) rebate claims in the Division office, on 7.4.2011, and they were duly given a stamped copy upon such filing of claims. As is the general practice, no signature was given on such claims so filed, though valid stamps were put on the claims. Since the rebate claims were not processed for a period over seven months, they had approached the divisional authorities in this regard. Upon a search conducted in Room No.322 of the divisional office, all six claims were found lying in a corner, and such claims were also bearing proper dated stamp of 7.4.11 as the date of having been filed. Based on the presumption that since the rebate claims were not bearing any "signature" of divisional staff along with the stamp, and since there was no entry in "inward register" and/or "rebate claim register", the rebate claims are time barred and required to be rejected on such grounds, SCN dt.5.1.12 was issued to them. While the SCN proposed to "reject" the rebate claims as time-barred, the OIO

dt.31.3.12 on the other hand, "returned" the said rebate claims, by treating it to be time-barred, and thereby actually traveling beyond the scope of the proceedings, inasmuch as the SCN had never proposed "return" of claim at all.

6.3 In fact, Hon'ble Gujarat High Court in the case of United Phosphorous Ltd. V/s.UOI 2005 (184) ELT 240 (Guj) has held that the Asst. Commissioner before whom refund claim is filed, is duty bound to decide the same, and cannot return the refund under any circumstances.

6.4 Be that as it may, even the impugned order has wrongly upheld the said action on part of original authority, by treating the claim as time barred. Both lower authorities have purely based the findings on extreme conjectures, surmises, and concocted assumptions, without any factual basis at all. One crucial thing however is that it is an admitted position that the acknowledgement stamp which was put on all six rebate claims was genuine and not forged and/or fake at all.

6.5 It is their understanding that due to lapse on part of whoever may be responsible at the divisional office, for properly recording rebate details in appropriate registers, if any, and in order to simply pass the buck, the revenue authorities are skirting around the real issue, that when rebate claims were otherwise filed on 7.4.11, bearing a genuine stamp of acknowledgement of Divisional office, and which claims were not processed at their end, the same cannot be rejected / returned at all, on the pretext of "possibility of "managing office stamp" which might have been left unattended by negligent act of dispatch table and "possibility of misuse of office stamp". Such findings in the OIO dt.31.3.12 are in fact almost laughable.

6.6 On one hand, the Original authority admits that "dispatch table" is negligent since they may have kept office stamp unattended, however, the revenue authorities are not ready to believe that such negligence can also be in simply putting the files in a corner, after having been filed, without entering them in proper rebate registers/inward registers. If one has to presume "negligence in keeping office stamp unattended" one cannot rule out negligence on part of Divisional office staff in having failed to account for/record and/or process rebate claims, which may have been even a deliberate act for reasons best known to them. One cannot forget the fact that all six claims were found lying in the premises of the Divisional office only and it is not a case as if they are only claiming to have filed the rebate claims whereas such claims are not found in possession of revenue authorities.

- 6.7 While the presumption of "unattended office stamp" though too fantastic to be believed is considered for the sake of argument, still, the physical presence of six claims in divisional office is not justified by the revenue authorities at all. The Divisional Superintendent in his report as reported in the SCN (Para 3) nor the OIO nor the impugned OIA even remotely suggest the manner in which six rebate claims (presumably bulky on account of various supporting documents attached with the same) found its way into Divisional office. The onus now actually lies on revenue authorities to explain how they are in possession of six rebate claims bearing acknowledgement of 7.4.11, since it is nobody's case that they had surreptitiously kept such rebate claims in the middle of the night, in the Divisional office in Room No.322 at all!
- 6.8 They have already brought on record the practice in very same Divisional office not to out "signature" on rebate claims being filed and upon filing rebate claims, mere stamp is put on the same, and such rebate claims are even processed by the Divisional office. Such instances are already on record (running page 70 and 76) with corresponding rebate sanction orders. So much so, even the office of CCE(A), Vadodara as well, while accepting appeals, merely placed "stamp" without any signature thereon (running page 40). As such, findings at Para 5.3 of the impugned order are therefore unwarranted and legally untenable. As such, the fact that six rebate claims were not bearing "signature" of person receiving is hardly a reason to doubt genuineness of the factum of having filed the same on 7.4.11 at all.
- 6.9 The elaborate flow chart prepared and placed in the OIO regarding "ideal process required to be followed" by revenue authorities in dealing with rebate claim, also hardly proves anything. It is the revenue authorities who have defaulted in following such "ideal process" and they cannot be penalized for the same. Once the Applicant shows practice of merely "stamping" rebate claims at the time of filing (without putting any initial thereon), the onus shifts on the revenue to show and prove, with cogent evidences, that the disputed six rebate claims were in fact not filed on 7.4.11 and how and who placed such physical copies of rebate claims in Room No.322 of the Divisional office. Surely, a divisional office, which deals with such sensitive matters and full of valuable documents, is not some place which can be accessed by anyone, that too in a manner that without being noticed, the office seal and stamp can be taken, placed on acknowledgement copy, as well as six rebate claim copies filed in duplicate (at least 12 times stamped) and then went to Room 322, and neatly arranged all rebate files there. Such an assumption is too farfetched, speculative and hardly believable. However what is surely believable is that the revenue officers, being casual and slack in

discharging their duties, and for reasons best known to them, including for extra-legal reasons, may have due to negligence and/or intentionally not processed the rebate claims. In fact, the OM anyway suggests that there is possibility of negligence in Divisional office in leaving stamps unattended, whereas no assumption is surprising made on the negligence of allowing anyone to entre Room 322 and place files there without being noticed and/or stopped.

6.10 In fact, under somewhat similar circumstances, where application / refund claims were filed and not entered in specific registers / only stamp affixed without putting any signature on the application/ refund claims, still the courts have consistently held that the onus stands discharged by the claimant and it is for revenue to show that such stamp acknowledgement was fake/forged and in absence thereof, the benefit of doubt must be extended to them:

- a. STP Ltd. 2016(331) ELT 151 (Tri Mumbai). They rely and refer to para 2 and 6 of the said Order
- b. Orient Craft Ltd. [2011 (22) S.T.R. 193 (Tri. - Del.)]. They rely and refer to para 4 of the said Order.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the applicant initially filed appeal before Tribunal Ahmedabad, which vide order no. A/11764/2016 dated 07.12.2016 dismissed the same on the ground of non-maintainability and lack of jurisdiction. On receipt of the said CESTAT order, the applicant filed the instant Revision Application and subsequently filed Misc. Application for condonation of delay stating therein the aforesaid factual position and requesting to condone the delay in filing revision application.

9. Government first proceeds to discuss issue of delay in filing this revision application. The chronological history of events is as under:

- |   |                  |
|---|------------------|
| (a) Date of receipt of impugned Order-in-Appeal dated 11.04.2013 by the applicant | 13.05.203        |
| (b) Date of filing of appeal before Tribunal                                      | 19.06.2013       |
| (c) Time taken in filing appeal before  | 1 month & 6 days |

Tribunal  
by the applicant

- |  |            |
|--|------------|
| (d) Date of receipt of Tribunal order dated 07.12.2016   | 03.01.2017 |
| (e) Date of filing of revision application by the applicant  | 28.02.2017 |
| (f) Time taken between date of receipt of Tribunal order to date of filing of revision application | 56 days    |

From the above position, it is clear that applicant has filed this revision application after 3 months and 2 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay.

10. Government notes that Hon'ble High Court of Gujarat in W.P. No. 9585/11 in the case of M/s. Choice Laboratory vide order dated 15-9-2011, Hon'ble High Court of Delhi vide order dated 4-8-2011 in W.P. No. 5529/2011 in the case of M/s. High Polymers Ltd. and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in W.P. No. 10102/2011 [2013 (290) E.L.T. 364 (Bom.)] vide order dated 25-4-2012, have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgments is squarely applicable to this case. Government therefore keeping in view the above cited judgment considers that revision application is filed after a delay of 2 days which is within condonable limit. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

11. Government in this case observes that the applicant has claimed to have filed 6 rebate claims in the Division Office on 07.04.2011 as they were bearing acknowledgment stamp of the division office upon such filing of claims. It is the contention of the applicant that as a general practice, no signature was given on such

claims so filed, though valid stamps were put on the claims. Since the rebate claims were not processed for a period over seven months, they had approached the divisional authorities in this regard. Upon a search conducted in Room No.322 of the divisional office, all six claims were found lying in a corner, and such claims were also bearing proper dated stamp of 07.04.2011 as the date of having been filed. On the other hand the Original authority as well as Commissioner (Appeals) have held that these six rebate claims files cannot be considered as filed on the date mentioned in dated acknowledgement stamp on 07.04.2011 and should be treated as filed when found lying in the division office on 14.11.2011 during search of the division office in the presence of authorized signatory of the applicant. The original authority in his Order in Original also observed that these six rebate claims were neither entered in inward register nor in rebate claim register and there should have been some token signature on the Rebate claim that it was indeed filed before the expiry of the relevant date and the onus lies on the claimant to prove that they have filed it.

12. The applicant in its reply dated 03.02.2012 to the Show Cause Notice at para 11 had contended that *"as a matter of fact, there was no uniform practice in the past for the rebate claims to be necessarily checked and countersigned before accepting the same; that there are instances wherein the claims are merely stamped as being acknowledged, without initials, and such claims were not only processed but eventually sanctioned"*. To justify this claim the applicant has also enclosed two such claims which bear only the office stamp without having any countersignature thereon by the Divisional staff. These refund claims were processed and sanctioned in the same Division office. However, without countering this argument of the applicant, the original authority in his Order in Original has arrived at conclusion that "Just by managing the office stamp which appears to have happened in this case and which might have been left un attended by a negligent act of the despatch Table, cannot be taken as the sole proof as having filed the rebate claim.

13. The Hon'ble Tribunal, Mumbai in STP Ltd. 2016(331) ELT 151 (Tri Mumbai) (which is also relied upon by the applicant) has held that:

*"I find that the appellant has filed refund claim on 30-9-2010 and obtained acknowledgement. From the copy of acknowledgement no doubt can be raised that the said acknowledgement is fake or forged. Even in the adjudication order as well as in the Commissioner (Appeals) order there is no charge of any wrong*



*doing or forgery as regard the acknowledgment of the filing of refund claim with the Customs Department. I do not agree with lower authorities' contention that as general practice file number is mentioned on the acknowledgment. Once the appellant has been given acknowledgment unless until this held to be fake or forged, the said acknowledgment has to be accepted as proof of filing the refund claim. Therefore, I am of the view that acknowledgment submitted by the appellant should be taken as proof of filing refund claim and if that is so, refund claim filed by the appellant is well within stipulated time period. The refund claim should not be rejected as time-barred.....*

14. Government observes that this is not the case of stamping only one or two pieces of claim papers but the stamps are put on six rebate claims i.e on 12 copies and therefore it is difficult to believe that Office stamp was managed and that the stamping was done in a manner in official premises, i.e. the Division office. Once the claim papers bear acknowledgement stamp, the onus was on the department to prove that such acknowledgment was fake/ forged or managed, however, the department has not even attempted to investigate and prove the same.

15. In view of the aforesaid discussion and the case law mentioned above Government is of the considered view that the date of the filing these six rebate claims has to be the date of the stamp i.e. 07.04.2011 appearing on these rebate claims and the said rebate claims are required to be taken up for processing, taking that date as the date of filing of these six rebate claims.

16. In view of position explained above, Government sets aside the impugned Order-in-Appeal and remands the matter back to the original authority for sanctioning these rebate claims to the applicant as per law, if otherwise in order.

17. The revision application is disposed off in the above terms.

18. So, ordered.

  
(SEEMA ARORA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India.

ORDER No. 342/2019-CX (WZ)/ASRA/Mumbai DATED 10.12.2019.

To,

M/s Alembic Pharmaceuticals Ltd.  
P.O. Tajpura, Nr. Baska,  
Village : Panelav, Taluka : Halol, Vadodara 390 003.

Copy to :

1. Commissioner of Goods & Service Tax, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Course Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of Goods & Service Tax, Division-II, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA),Mumbai.
5.  Guard file.
6. Spare Copy.