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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/253/14-RA/6113

Date of Issue: 20¹⁶.09.2021

ORDER NO. 348/2021-CX (WZ) /ASRA/Mumbai DATED 20.09.2021 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 Private Limited,
21-22, Kalpataru Square, Kondivita Junction,
Off Andheri Kurla Road, Andheri (East),
Mumbai 400 059

Respondent : Commissioner of Central Excise, Thane I.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. PD/55 & 56/M-I/2014 dated 28.03.2014 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I

ORDER

This revision application is filed by M/s Watson Pharma Private Limited, 21-22, Kalpataru Square, Kondivita Junction Off Andheri Kurla Road, Andheri (East), Mumbai 400 059 (hereinafter referred to as "the applicant") against the Orders-in-Appeal No. PD/55 & 56/M-I/2014 dated 28.03.2014 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone I.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed ten rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 in respect of the goods exported by them. The applicant filed the rebate claims with the Respondent alongwith supporting documents, for the goods cleared and exported from their depot at Plot No.-7. MIDC. Additional Ambernath, Anand Nagar, Ambernath (E). Dist. Thane. The total amount of rebate claimed in the 10 rebate claims was Rs. 17,09,103/- (Rupees Seventeen lakhs Nine Thousand One Hundred and Three only) being central excise duty paid on exported goods. The Rebate Sanctioning Authority while scrutinizing the impugned rebate claim noticed following discrepancies -

- a) The exporter had exported the goods from his warehousing premises. The condition for grant of rebate that the goods must be exported directly from the factory of manufacture as prescribed under Notification No 19/2004-CE(NT) dated 06.09.2004 was not fulfilled as the goods had been exported from the stock lying in the godown of the exporter.
- b) The exporter had not submitted the triplicate copy of the ARE1 of each claim but submitted an indemnity bond duly notarized mentioning the same is not traceable.
- c) In respect of 5 claims, the claims were returned to the claimant alongwith the original documents, under a cover of deficiency memo with the remarks 'Triplicate copy of ARE 1 not submitted and manufacturer invoice not submitted'. The claims, after due compliance were not submitted with the stipulated time limit.

3. Two separate show cause notices were issued to the applicant for rejection of the rebate claims on the grounds of being not eligible in terms of Circular No 294/10/97 dated 30.01.1997 read with Notification No 19/2004-CE(NT) dated 06.09.2004 and also being time barred in terms of Section 11B of the Central Excise Act, 1944.

4. Of the 10 impugned rebate claims filed, five rebate claims amounting to Rs 8,95,649/- was rejected vide order in original No KII/518-R/2013(MTC) dated 24.07.2013, as the claimant had failed to furnish the triplicate copy of the ARE 1 and had thus failed to prove the payment of central excise duty against the goods exported and were thus not eligible for rebate as per Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002.

4.1 The remaining five impugned rebate claims amounting to Rs 8,13,454/- were rejected vide order in original No KII/519-R/2013(MTC) dated 24.07.2013 as the claimant had failed to furnish the triplicate copy of the ARE 1 and had thus failed to prove the payment of central excise duty against the goods exported and were thus not eligible for rebate as per Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002 and also as being time barred in terms of Section 11B of the Central Excise Act, 1944.

5. Being aggrieved by the Orders in Original, the applicant filed appeals before the Commissioner (Appeals), Central Excise, Mumbai Zone I. Pursuant to verification and report from Commissioner of Central Excise, Thane I Commissionerate regarding confirmation of duty payments, the Appellate Authority vide Order in Appeal No. PD/55 & 56/M-I/2014 dated 28.03.2014 partly allowed the appeals for sanction of the rebate claims filed by the applicant except in respect of ARE-1 No . 900000001 dated 27.04.2011 for Rs 4,17,150/- and ARE 1 No 007 dated 05.02.2009 for Rs. 72,100/-. The appellate authority while passing the impugned order in appeal observed that:-

- a) The applicant has submitted the relevant triplicate copies of ARE-I's with the jurisdictional Range Superintendent and it is the duty of the Range Superintendent to verify the authenticity of payment particulars and then forward the said triplicate copies to the Maritime Commissioner (Rebate), Mumbai-I for further necessary action.
 - b) The adjudicating authority's observation that the said rebate claims has been time barred by taking second date of submission being beyond one year time, is not justifiable as the triplicate copies of subject ARI-1's were not in the possession of the applicant.
 - c) The Commissioner of Central Excise, Thane-I Commissionerate informed that against AR-1 No 900000001/27.04.2011 of Rs 4,17,150/- (excise invoice No.115), dated 31.12.2008) and 007 dated 04.02.2009 of Rs 72.100/- (Excise invoice No 1159 dated 31.12.2018), no payment particulars has been given by the then principal manufacturer, M/s Watson Pharma Private Ltd.
6. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :
- a) The applicant submits that as regards the triplicate ARE-1 along with duty payment confirmation report in respect of Rebate claim No.74 dated 03.04.2013 ARE-1 No.007 dated 04.02.2009 of Rs.72,100/ was sent directly to office of the Maritime Commissioner (Rebate), Mumbai-IV (Now, Mumbai-I). As per the copy of duty verification report received from the department vide F. No. CEx/R-V/KIII/ANNXD/Watson/08 dated 17.03.2009, it is evident that the department has confirmed that Arch Pharma has paid duty of Rs. 72,100/- and the rebate claim should be allowed.
 - b) The applicant submitted that as regards rebate claim No. 75 dated 03.04.2013 ARE-1 No. 900000001 dated 27.04.2011 for Rs.4,17,150/- , that goods were exported and the triplicate ARE-1s were submitted to their jurisdictional range for verifying duty paid nature of goods from jurisdictional manufacturer's range and subsequently, it was sent directly from the manufacturers range office to the Maritime Commissioner (Rebate), Mumbai-IV (subsequently Mumbai-I). The

applicant submits that rebate claims should not be denied merely for non-receipt of Triplicate ARE-1s copies alongwith duty payment particulars from manufacturer's range office to Maritime Commissioner's Office, Mumbai-I and the applicant does not have the control over the same.

- c) The applicant submits that the procedure prescribed under Notification No. 19/2004 -C.E (NT) dated 06.09.2004 for merchant exporter was followed and that since all the documents as required under the said notification has been submitted and duty paid goods have been exported, therefore, rebate claims should be sanctioned to the applicant.
- d) The applicant submits that the rebate claim should not be denied merely on the basis of non-receipt of Triplicate ARE-1s (Pink copy) when other original & duplicate ARE-1 are already submitted to substantiate the export of goods.
- e) Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. The fact of payment of duty can be verified by jurisdiction by collateral evidence also. The rebate claim should not be denied merely on this ground.

7. A Personal hearing in the matter was granted on 08.05.2018, 15.10.2019, 20.11.2019, 02.02.2021, 16.02.2021, 06.07.2021 and 20.07.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant / department. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

8. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

9. The Government observes that the applicant had filed in all ten rebate claims involving total rebate amount of Rs. 17,09,103/-. The rebate sanctioning authority vide impugned orders in original rejected all the ten

rebate claims. The impugned rebate claims were rejected by the rebate sanctioning authority on the grounds that the applicant had failed to prove the payment of central excise duty as they did not furnish the triplicate copy of the ARE 1 which are mandatory documents required to be submitted along with rebate claims under Notification No. 19/2004-CE (NT) dated 06.04.2009 read with Rule 18 of the Central Excise Rules, 2002. In addition, 5 of the rebate claims were also rejected by the rebate sanctioning authority as being time barred in terms of Section 11B of the Central Excise Act, 1944.

9.1 The Government also observes that the Appellate Authority subsequently allowed the appeal of the applicant for sanction of rebate in respect of eight rebate claims and rejected the rebate claims filed by the applicant except ARE-1 No. 900000001 dated 27.04.2011 for Rs 4,17,150/- and ARE 1 No 007 dated 04.02.2009 for Rs. 72,100/-.

9.2. Government notes that the applicant has filed the revision application in respect of the rebate claims filed in respect of ARE-1 No. 900000001 dated 27.04.2011 for Rs 4,17,150/- and ARE 1 No 007 dated for Rs. 72,100/- which were rejected by the Appellate Authority as no payment particulars were given by the principal manufacturer, M/s Watson Pharma Pvt Ltd.

9.3. On perusal of the records it is observed that the applicant had filed copies of the following document alongwith each of the said rebate claims.

- i) Original, duplicate and triplicate copies of ARE-1s.
- ii) Shipping bills.
- ii) Airway bill.
- iii) Central Excise Invoices.
- iv) Customs invoices and packing lists.

9.4 Government notes the following in the instant case

- a) The applicant had submitted the proof that goods by way of certification of the customs authority on the copies of the ARE 1's that the goods cleared for export were actually exported
- b) Though the applicant has mentioned the duty payment particulars on the ARE 1's, jurisdictional range officer has stated

at Part A of the ARE 1's that the duty payment mentioned in the ARE 1's could not be verified as the duty was paid at the manufacturers premises.

9.5. Government notes that correctness and certification of the duty paid character of the goods exported by the applicant is the issue to be considered in the instant case. Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions stipulates as under :-

"8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

8.3 The following documents shall be required for filing claim of rebate :

- (i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
- (ii) Original copy of the A.R.E. 1,*
- (iii) Invoice issued under rule 11,*
- (iv) Self attested copy of shipping bill, and*
- (v) Self attested copy of Bill of Lading.*
- (vi) Disclaimer Certificate [in case where claimant is other than exporter]*

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

10. The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central

Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

10.1 The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

10.2 Hence, the deficiency i.e. non-submission of payment particulars by the manufacturer as stated by the Appellate Authority while rejecting the two rebate claims amounting to Rs.4,17,150/- and Rs. 72,100/- are merely procedural infractions and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002. The Government finds that the adjudicating authority has already recorded facts that the impugned goods removed from the factory premises of the applicant were duty paid and the same were duly exported. In the event, the rejection of the impugned rebate claims on solitary ground of non submission of Original Copy of ARE-1s is not just and proper particularly when the facts regarding the export of duty paid goods have been recorded by the Original Authority in the Order.

10.3 In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

10.4 The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

10.5 In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation*

of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in *Shreeji Colour Chem Industries v. Commissioner of Central Excise* - 2009 (233) E.L.T. 367, *Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise* - 2007 (217) E.L.T. 264 and *Commissioner of Central Excise v. TISCO* - 2003 (156) E.L.T. 777.

17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and

the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

10.6 Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

10.7 Government finds that ratio of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matter of sanction of the rebate claims.

10.8 In view of discussions and findings elaborated above, Government holds that impugned two rebate claims filed in respect of ARE-1 No. 900000001

dated 27.04.2011 for Rs 4,17,150/- and ARE 1 No 007 dated 04.02.2009 for Rs. 72,100/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.04.

11. Accordingly, Government sets aside Orders in Appeal No PD/55&56/M-I/2014 dated 28.03.2014 passed by the Commissioner (Appeals), Central Excise & Customs, Mumbai Zone I, to the extent of the order passed in respect of the two rebate claims and directs the Original Authority for verification of duty payment of impugned two rebate claims filed by the applicant in respect of ARE-1 No. 900000001 dated 27.04.2011 for Rs 4,17,150/- and ARE 1 No 007 dated 04.02.2009 for Rs. 72,100/-, in the light of above discussion after giving reasonable opportunity of hearing to the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. The Revision application is allowed on above terms.

Shrawan
30/9/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 348/2021-CX (WZ) /ASRA/Mumbai DATED 30.09.2021

To,

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

Copy to:

1. The Commissioner of CGST, Mumbai East Commissionerate, 9th Floor, Lotus Info Centre, Station Road, Parel (East), Mumbai 400 012.
2. The Commissioner of CGST, Appeals-II, 3rd Floor, CGST Bhavan, Plot No C-24, Sector E, BKC, Bandra (East), Mumbai- 400 051
3. The Deputy Commissioner (Rebate), Mumbai East Commissionerate, 9th Floor, Lotus Info Centre, Station Road, Parel (East), Mumbai 400 012
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.