

REGISTERD POST
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, Cuffe Parade,
Mumbai- 400 005

F.No. 195/143/2015-RA/6022

Date of Issue: 14/10/2021

ORDER NO. 356/2021-CX (WZ) /ASRA/MUMBAI DATED 12.10.2021
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.Intas Pharmaceuticals Ltd.

Respondent: Commissioner (Appeals-II), Central Excise, Ahmedabad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act,
1944 against the Order-in-Appeal No. AHM-EXCUS-002-APP-190-14-
15 dated 12.02.2015 passed by the Commissioner (Appeals-II),
Central Excise, Ahmedabad.



ORDER

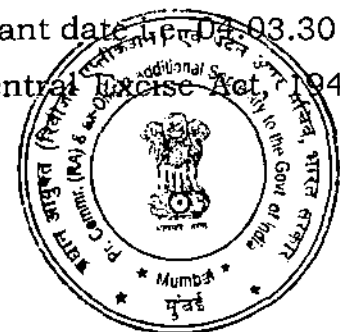
This Revision Application has been filed by M/s Intas Pharmaceutical Ltd., 2nd floor, Chinubhai Centre, Off Nehru Bridge, Ashram Road, Ahmedabad -380 009 (hereinafter referred to as "the Applicant" against the Order-in-Appeal No. AHM-EXCUS-002-APP-190-14-15 dated 12.02.2015 passed by the Commissioner (Appeals-II), Central Excise, Ahmedabad.

2. The case in brief is that the Applicant is engaged in the manufacture of P.P. Medicines falling under Chapter 30 of the First Schedule of CETA, 1985. The excisable goods manufactured by them are cleared for home consumption and for exports as well. The Applicant had exported goods during the period December 2008 to September 2009 and claimed a rebate of excise duty of Rs. 31,12,835/- under Rule 18 of the Central Excise Rules 2002.

- (i) The said amount of Excise Duty Rs.31,12,835/- was calculated & paid based on the CIF value of the goods exported. The adjudicating authority Assistant Commissioner (Rebate), Raigad, vide Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010, sanctioned in cash rebate of Rs. 30,28,439/- calculating it on the basis of FOB value of Exports made.
- (ii) During-the post-audit review of the Order-in-Original in question it was observed by the department that in respect of the other OIOs, the rebate was granted based on the CIF value of the exports. Hence, the department preferred appeal before the Commissioner (Appeals). The said appeal was rejected by the Commissioner (Appeals) vide Order-in-Appeal No. YDB/568-759/RGD/2010 dated 15.09.2010.
- (iii) Being aggrieved by the impugned Order-in-Appeal, the department had filed a Revision Application, whereupon the Revisionary Authority vide GOI Order No. 926-991/11-CX dated 25.07.2011 remanded the case to the Original Authority to decide afresh after conduct requisite verification and in the light of observation made in the revision of



- (iv) The Original Authority, Deputy Commissioner of Central Excise (Rebate), Raigad vide Order-in-Original No 2981/12-13/Deputy Commissioner (Rebate)/Raigad, dated 28.02.2013 held that-
- (a) The rebate claims are to be restricted to the amounts of duty worked out on the basis of the FOB value and not to the assessable value shown in the ARE-1s as claimed by the Applicant.
- (b) He sanctioned the amount of Rs. 30,28,439/- in respect of the Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010 under the provisions of Section 11B of Central Excise Act read with Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004.
- (c) The Applicant is at liberty to take up the issue with the jurisdictional Assistant/Deputy Commissioner for taking re-credit of the reduced duty amount of Rs. 84,396/-.
- (d) Since the amount of Rs. 30,28,439/- is already paid to the Applicant vide Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010, the net amount payable order in this order is NIL.
- (v) In view of the above Order-in-Original No. 2981/12-13f Dy.Commr.(Rebate)/Raigad dated 28.02.2013, the Applicant filed a refund claim of Rs. 84,396/-. The Applicant was issued Show Cause Notice dated 24.04.2014) as to why claim for refund of Rs. 84,396/-, should not be rejected as the same was filed on 11.03.2014 after a period of one year from the date of the said Order-in-Original.
- (vi) The Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II vide Order No. 41/Refund/2014 dated 30.05.2014 held that
- (a) The Applicant had filed the refund claim after expiry of one year from the date of Order-in-Original No. 2981/12-13f Dy.Commr.(Rebate)/Raigad dated 28.02.2013 as the refund is filed on 11.03.2014 after one year from the relevant date i.e. 03.3014 as envisaged under Section 11B of the Central Excise Act, 1944, hence the claim is time barred;



(b) Para 7 of the Order-in-Original No. 2981/12-13f Dy. Commr.(Rebate)/Raigad dated 28.02.2013 is reproduced below:

S.No.	OIO No	Date	Amount sanctioned	Amount admissible	Differential amount
1	1970/09-10/AC(Rebate) Raigad	17.03.10	3028439	3028439	0

From the above table it is crystal clear that the Applicant's claim that they made excess payment was not acceptable. Further the Deputy Commissioner(Rebate), Central Excise, Raigad had never confirmed that the Applicant had paid excess paying in the Order-in-Original No. dated 28.02.2013 and simply stated that the applicant is at liberty to take up the issue with the jurisdictional Assistant/Deputy Commissioner for taking re-credit of the reduced duty amount of Rs. 84,396/-. But the Applicant has not submitted sufficient documents to prove the excess payment made by them and the Applicant had not given any intimation to range office or division office regarding excess payment made by them.

(vii) Aggrieved, the Applicant filed appeal before the Commissioner (Appeals-II), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No. AHM-EXCUS-002-APP-190-14-15 dated 12.02.2015 upheld the Order-in-Original and rejected the appeal.

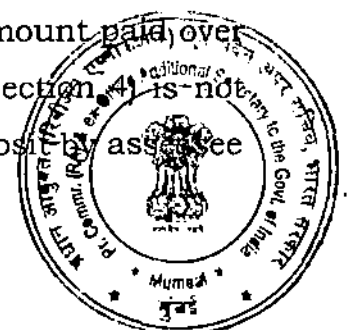
3. Aggrieved, the Applicant then filed the current Revision Application of the following grounds:

- (i) The adjudicating authority had not appreciated that the rebate claimed by the Applicant should have been paid to them by cheque only, when such claim was after export of the goods.
- (ii) No separate claim under Section 11B of the Central Excise Act, 1944 is required to be filed for taking this re-credit for the the amount of Rs. 84,396/-. Re-credit has been denied only on the ground that the claim was not filed within one year of the Order-in-Original dated 28.02.2013 before the Dy. Commissioner having jurisdiction over the Applicant's factory. The



time limit prescribed Section 11B of the Central Excise Act, 1944 is applicable only in the cases of refunds claimed of "excise duty" and not applicable in cases of claim for the "deposits made", when the mandatory requirement of export is fulfilled.

- (iii) The Order-in-Original dated 28.02.2013 has held that Applicant was eligible for cash refund of amount of Rs. 30,28,439/- (on FOB Value), which was already paid and hence the Applicant was directed to approach the jurisdictional AC/DC for taking the re-credit of the reduced duty amount of Rs. 84,396/-. Thus, the Applicant's eligibility to such re-credit has already been allowed vide Order-in-Original dated 28.02.2013 which cannot be objected by other Order-in-Original.
- (iv) The Commissioner(Appeals) had not correctly appreciated that at the time of export, excise duty was paid on CIF value which is higher than the FOB value. In terms of Section 4 of Central Excise Act 1944, "Place of removal" being the port of shipment, in cases of export by a manufacturer, FOB value is the assessable value for calculation of assessment of excise duty. Therefore, any amount paid in excess of the excise duty on FOB value is not the duty of excise which cannot be retained even by Government and consequently the excess amount of Rs. 84,396/- deposited on the basis of CIF value instead of FOB value cannot be treated as "duty of excise" and the same also cannot be retained by Government and hence excess amount deposited with Government is required to be refunded / re-credited. The claim of Rs. 84,396/- in question represents such excess amount deposited with the Government of India. It is the amount paid in excess of the excise duty on CIF Value, instead of on FOB value of goods exported under Rule 18 of Central Excise Rules 2002.
- (v) The lower authorities have not correctly appreciated the Applicant's contention that Section 11B of CEA 1944 provides for refund of excess "EXCISE DUTY" paid, if any. Refund/Re-credit of amount which is not Excise Duty, is not governed by the Section 11B *ibid*. Any amount paid, over & above the excise duty on Assessable Value (in terms of Section 4) is not treated as excise duty. It is merely an excess payment or deposit by assessee



to the Government and the same cannot be retained even by the Government of India. Such excess amount of deposit has to be returned by way of a Refund as it may be called or has to be given as a Re-credit of the said amount in the account from where it was debited initially. When the provisions of section 11B *ibid* are not applicable in this case, the question of applying time limitation prescribed under Section 11B *ibid* also is not applicable here.

- (vi) This is not a case of filling fresh case under Section 11B of the CEA 1944 or claiming any fresh amount of duty after the Order-in-Original dated 28.02.2013. Claiming re-credit is not at all a claim of Refund as contemplated under Section 11B of the CEA 1944. The law established through various judicial decisions is that any amount paid in excess of the excise duty, then, it cannot be treated as excise duty.
- (vii) The Core aspect in determination of rebate claim is the fact of "*manufacture of excisable goods, payment of duty thereon and its export and filling initial Rebate claim within time limit*". Applicant has undisputedly fulfilled all these conditions. Therefore, claim for re-credit of a part amount of Rs. 84,396/- after the Order-in-Original dated 28.02.2013 is not the claim under Section 11B *ibid* and hence the same is not deniable on facts & the Law established.
- (viii) Though it was not required, the Applicant has submitted request for allowing re-credit of Rs. 84,396/- after the Order-in-Original dated 28.02.2013 to the Dy.Commissioner, Central excise, Divn-IV, Ahmedabad-II, who are legally authorized to process the claim of the Re-credit.
- (ix) The prime condition to allow "*Rebate*" is "*manufacture of goods, pay duty thereon and export goods*". These facts are not under any dispute. However, filling claim for Re-credit after Order-in-Original dated 28.02.2013 before the authority in the said Rule is "*procedural requirement*". When mandatory requirement is fulfilled, procedural requirement of filling claim for Re-credit before jurisdictional authority should not come in the way for allowing Re-credit of amount paid while the goods were exported, which is otherwise available. The Applicant place reliance on few case laws



- (x) It is well settled law that the "substantive benefit" otherwise available cannot be denied for procedural lapses. The rebate claim was filed before DC of central excise having jurisdiction over the factory of Applicant, instead of Maritime Commissioner as declared in ARE-1. This could be viewed as procedural lapse. Settled law indicates that incentives of export cannot be denied to exporter on account of procedural lapses and it has been the policy of the Government of India to export the goods and not the taxes.
- (xi) CBEC Circular No. 687/3/2003-CX dated 03.01.2003 and Circular No. 262/96/96-CX.6 dated 06.11.1996 providing that Rebate of duty paid from Cenvat credit account for exported goods to be refunded in cash requires to be followed in this case.
- (xii) The Revenue authority should have allowed cash rebate in view of CBEC Circular No. 203/37/96-CX, dated 26.04.1996 and Circular No. 510/06/2000-CX dated 03.03.2000.
- (xiii) The Applicant prayed that the impugned Order-in-Appeal dated 12.02.2015 be set aside their re-credit of Rs. 84,396/-be allowed.

4. Personal hearing in the matter was fixed for 11.08.2021 and 18.09.2021. On 18.08.2021, on behalf of the Applicant, Shri Sreeram Koza, Vice President (I.T.) appeared online hearing and reiterated his submissions. He stated that issue is only allowing credit of excess payment of duty on CIF value as rebate was given on FOB value. He submitted that this should be happened on its own. He requested to allow credit.

5. 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.

6. On perusal of the records, Government observes that the Applicant had exported goods during the period December 2008 to September 2009 and claimed a rebate of excise duty of Rs. 31,12,835/- under Rule 18 of the Central Excise Rules 2002. The said amount of Excise Duty Rs.31,12,835/- was calculated &



paid based on the CIF value of the goods exported. The adjudicating authority Assistant Commissioner (Rebate), Raigad, vide Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010, sanctioned in cash rebate of Rs. 30,28,439/- calculating it on the basis of FOB value of Exports made. In the revision application filed by the Department, the Revision Authority vide Revisionary Authority vide GOI Order No. 926-991/11-CX dated 25.07.2011 remanded the case to the Original Authority to decide afresh after conduct requisite verification and in the light of observation made in the revision order. The Original Authority, Deputy Commissioner of Central Excise (Rebate), Raigad vide Order-in-Original No 2981/12-13/Deputy Commissioner (Rebate)/Raigad, dated 28.02.2013 held that the rebate claims are to be restricted to the amounts of duty worked out on the basis of the FOB value and not to the assessable value shown in the ARE-1s as claimed by the Applicant. He sanctioned the amount of Rs. 30,28,439/- in respect of the Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010 and the Applicant is a liberty to take up the issue with the jurisdictional Assistant/Deputy Commissioner for taking re-credit of the reduced duty amount of Rs. 84,396/-. Since the amount of Rs. 30,28,439/- is already paid to the Applicant vide Order-in-Original No. 1970/09-10/AC(Rebate) Raigad, dated 17.03.2010, the net amount payable order in this order is NIL. The Applicant vide their letter dated 12.02.2014 (received by the department on 11.03.2014) filed a refund claim of Rs. 84,396/- for re-credit in their Cenvat Credit Account. The lower authorities rejected their refund claim for re-credit on the grounds that the claim is time barred.

7. Government observes that the Applicant had originally filed rebate claims totaling to Rs. 31,12,835/- in respect of 25 ARE-1s under Rule 18 of the Central Excise Rules 2002 and as per the directions of the Revisionary Authority, the adjudicating authority vide Order-in-Original No 2981/12-13/Deputy Commissioner (Rebate)/Raigad, dated 28.02.2013 held that the Applicant is eligible for rebate of Rs. 30,28,439/- and re-credit of the duty amount of Rs. 84,396/-.



S.No.	Nos. of ARE-1s	Rebate amt claimed (Rs)	OIO No	Amount sanctioned	Remanded OIO No. & dt	Amount admissible (Rs)	Re-credit duty (Rs)	Differential amount
1	25 ARE-1s	31,12,835	1970/09-10/AC(Rebate) Raigad dt 17.03.10	3028439	2981/12-13/Deputy Commissioner (Rebate)/Raigad dt 28.02.13	3028439	84,396	0

8. Government observes that the adjudicating authority has rejected the refund on the ground of time bar aspect and on the ground that the Applicant has not submitted sufficient documents to prove the excess payment made by them, nor given any intimation to range office or division office regarding excess payment made by them. Government finds that the duty payments of 25 ARE-1s was effected in the months from December 2008, May 2009 to August 2009 and September 2012 (OIO No. 1970/09-10/AC(Rebate)Raigad dated 17.03.2010 and the refund/re-credit claim is an outcome of the Deputy Commissioner(Rebate), Mumbai-I Order-in-Original No 2981/12-13/Deputy Commissioner (Rebate)/Raigad, dated 28.02.2013 and hence is not time barred. Further no new documents are needed in this case, as all the records are already available with the department and on the said documents the Order-in-Original No 2981/12-13/Deputy Commissioner (Rebate)/Raigad, dated 28.02.2013 was decided by the Deputy Commissioner(Rebate), Mumbai-I.

9. Government places its reliance on the Hon'ble Gujarat High Court order dated 09.01.2016 In RE:Garden Silk Mills Ltd Vs UOI [2018 (2) TMI 15 Gujart High Court] where in it was held that

"9. Coming to the merits of the case, again undisputed facts are that the petitioner had paid excise duty on CIF value of goods exported. The petitioner does not dispute the stand of the Government of India that excise duty was payable on FOB value and not on CIF value. The Government of India also does not dispute the petitioner's stand that in such a case the additional amount paid by the petitioner would be in the nature of deposit with the Government which the Government cannot withhold without the authority of law. If these facts are established, a simple corollary thereof would be that the amount has to be returned to the petitioner. If therefore the petitioner's request was for re-credit of such amount in Cenvat account, the same



was perfectly legitimate. The Government of India should not have asked the petitioner to file separate application for such purpose. The Government of India itself in case of Balkrishna Industries Ltd. (supra), had substantially similar circumstance provided as under :

“8. In this regards, Government observed that the revisionary authority has passed a number of orders wherein it has been held that the rebate of duty is to be allowed of the duty paid the transaction value of the goods determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post clearances expenses like freight and insurances may be allowed as recredit entry in their cenvat account. Since the Government cannot retain the amount collected without any authority of law and the same has to be returned to the applicant in the manner it was paid. Hence, Government observes that the applicant is entitled for the take (sic) credit in their cenvat account in respect of the amount paid as duty on freight & insurance charge. The applicant was not even required to make a request with the department for allowing this recredit in their cenvat account. The adjudicating officer/ Commissione(Appeals) could have themselves allowed this instead of rejecting the same as timebarred.”

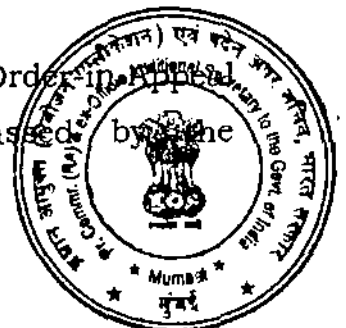
10. In the result, the respondents are directed to recredit the excess amount paid by the petitioner categorizing as excise duty of CIF value of the goods to the Cenvat credit account.

11. Petition is disposed of.”

10. Government finds that as the facts of the present Revision Application are similar to the above quoted cases, the ratio of the same is squarely applicable to this case.

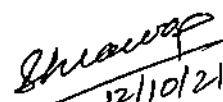
11. Hence, Government finds the excess paid amount of duty which was not held admissible for being rebated under Rule 18 of CER, 2002, has to be allowed as re-credit back in Applicant Cenvat Credit Account from where said duty was initially paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944, as the amount collected without any authority of law cannot be retained by the Government.

12. In view of the above, Government sets aside the impugned Order in Appeal No. AHM-EXCUS-002-APP-190-14-15 dated 12.02.2015 passed by the



Commissioner (Appeals-II), Central Excise, Ahmedabad and holds that the total excess paid amount of duty of Rs. 84,396/- (Rupees Eighty Four Thousand and Three Hundred and Ninety Six only) be re-credited in Applicant's Cenvat credit account from where said duty was initially paid.

11. Revision Application is allowed in terms of above.


12/10/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 356/2021-CX (WZ) /ASRA/Mumbai DATED 12.10.2021

To,
M/s Intas Pharmaceutical Ltd.,
2nd floor, Chinubhai Centre,
Off Nehru Bridge, Ashram Road,
Ahmedabad - 380 009.

Copy to:

1. The Commissioner of CGST, Ahmedabad North, 1st floor, Custom House, Near All India Radio, Income Tax Circular, Navrangapura, Ahmedabad - 380 009.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. ~~Spare Copy.~~

