

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, Cuffe Parade,  
Mumbai- 400 005

F.No.195/912/13-RA,198/46/14-RA,  
198/47/14-RA, 198/47/14-RA

Date of Issue:- 20/11/18

ORDER NO. 363-366/2018-CX (WZ)/ASRA/MUMBAI DATED 30.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sr. No.	Revision Application No	Applicant	Respondent
1	195/912/13-RA	Alkem Laboratories Ltd., Mumbai	Commissioner of Central Excise, Surat-II
2	198/46/14-RA	Commissioner of Central Excise, Surat-II	Alkem Laboratories Ltd., Mumbai
3	198/47/14-RA	Commissioner of Central Excise, Surat-II	Alkem Laboratories Ltd., Mumbai
4	198/48/14-RA	Commissioner of Central Excise, Surat-II	Alkem Laboratories Ltd., Mumbai

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal No.

1. SUR-EXCUS-002-APP-174-13-14 dated 30.08.2013,
2. SUR-EXCUS-002-APP-249-13-14 dated 27.11.2013,
3. SUR-EXCUS-002-APP-251-13-14 dated 29.11.2013 and
4. SUR-EXCUS-002-APP-270-13-14 dated 31.12.2013 respectively, passed by the Commissioner (Appeals), Central Excise, Surat-II.

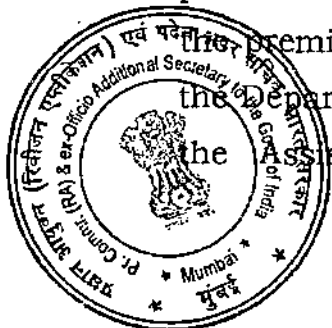


**ORDER**

The following Revision Applications have been filed by the below mentioned applicants against the Orders-in-Appeal, detailed in table below passed by Commissioner (Appeals), Central Excise, Customs and Service Tax, Surat -II.

Sl. No.	Revision Application File No.	Revision Application filed by	Order-in-Original No. & date	Order-in-Appeal No. & date	Amount of rebate claim involved (Rs.)
1	195/912/13-RA	Alkem Laboratories Ltd., Mumbai	1705 to 1713/ SRT-II/ANK-II/ Rebate /12-13 dated 31.12.2012	SUR-EXCUS-002-APP-174-13-14 dated 30.08.2013	7,78,028/-
2	198/46/14-RA	Commissioner, Central Excise & Customs, Surat-II	947 to 956/ SRT-II/ANK-II/ Rebate /13-14 dated 08.07.2013	SUR-EXCUS-002-APP-249-13-14 dated 27.11.2013	6,19,133/-
3	198/47/14-RA	Commissioner, Central Excise & Customs, Surat-II	1276 to 1281 / SRT-II/ANK-II/ Rebate /13-14 dated 29.08.2013	SUR-EXCUS-002-APP-251-13-14 dated 29.11.2013	3,33,671/-
4	198/48/14-RA	Commissioner, Central Excise & Customs, Surat-II	1284 to 1288 / SRT-II/ANK-II/ Rebate /13-14 dated 25.11.2013	SUR-EXCUS-002-APP-270-13-14 dated 31.12.2013	2,39,267/-

2. The issue involved in all the above revision applications are the same which is that the Rebate claims filed by M/s Alkem Laboratories Ltd. as merchant exporter in respect of exports of the goods manufactured by M/s Galpha Laboratories Ltd., Ankleshwar were rejected by the Assistant Commissioner, Central Excise & Customs, Division-II, Ankleshwar, Surat-II on the main ground that the goods did not move directly from the factory of manufacture for exports to the port of shipment in terms of condition (a) prescribed under Notification No.19/2004-C.E.(N.T.), dated 06.09.2004; that the premises from where the goods were exported were not registered with the Department and that the said premises did not fall in the jurisdiction of the Assistant Commissioner having jurisdiction over the factory of



manufacture of the said goods with whom the rebate claims in question were filed.

3. Being aggrieved, M/s Alkem Laboratories Ltd. filed appeals in all the cases mentioned in the Table at Para 1 above before the Commissioner (Appeals), Central Excise, Surat-II. The Commissioner (Appeals) rejected the appeal in the case shown against Sl.No.1 of the Table at para 1 and allowed the remaining three appeals in the cases shown against Sl.Nos.2 to 4 of the Table at para 1.

4. M/s Alkem Laboratories Ltd. filed Revision Application against the Order-in-Appeal passed by the Commissioner (Appeals) shown at Sl.No.1 of the Table at para 1 above and the Commissioner, Central Excise & Customs, Surat-II filed Revision Applications against the Orders-in-Appeal shown at Sr.No.2 to 4 of the table mainly on the following grounds.

4.1 Grounds of R.A.No.195/912/13-RA filed by the applicant, M/s Alkem Laboratories Ltd.

4.1.1 As per condition (ii) prescribed in the table below to Part I of Chapter 8 (EXPORT UNDER CLAIM FOR REBATE) of CBEC's Excise Manual of Supplementary Instructions, 2005, a general permission has been granted for exporting the duty paid goods from a place other than the factory or warehouse where it is possible to correlate the goods and their duty paid character and Circular No.294/10/94-CX dated 30.01.1997 issued by the Ministry is the said general permission, relaxing the condition of direct exports from a factory or warehouse. They had followed the procedure prescribed in the said Circular while exporting the goods in question.

4.1.2 There are several decisions of the Revisionary Authority on the issue of admissibility of rebate claims in respect of exports from a place other than direct removal for exports from factory of manufacture, subject to following of procedure laid down in Ministry's Circular No.294/10/94-CX dated 30.01.1997. The applicant relied upon the Order No.1082/13-cx dated 16.08.2013 of the Revisionary Authority issued in their own case involving similar issue as in the instant case, wherein it was held that the aforesaid Circular dated 30.01.1997 grants permission to export goods from a place other than factory or



registered warehouse subject to compliance of procedure laid down therein. The Revisionary Authority also observed in the said Order that the applicant had not violated the said Circular and that they had kept the department informed that they were going to export the goods in terms of the said Circular.

- 4.1.3 On the issue of registration under rule 20 of the Central Excise Rules, 2002 and following of procedure laid down in Circular No.579/16/2001-CX dated 26.06.2001 in respect of the premises of the applicant from where the goods were exported or the Head Office of the applicant, the said rule and the Circular are applicable only in the cases where excisable goods are stored without payment of duty; that in the instant case, duty paid goods were stored in the premises of the Applicant and hence the said rule and Circular are not relevant at all.
- 4.1.4 On the issue of jurisdiction of rebate sanctioning authority, as per Para 3(b)(i) [Procedures: - Presentation of claim for rebate to central excise] of Notification No.19/2004-C.E. (N.T.) dated 06.09.2004, rebate claim can be lodged to the Assistant Commissioner of Central Excise having jurisdiction over factory of manufacture.
- 4.1.5 On the issue of physical verification of exports, they had submitted a letter dated 23.09.2011 to the Assistant Commissioner, Central Excise, Division-North Daman, Daman, having jurisdiction over their Daman godown, well in advance to the clearance of goods in question for exports informing about their intention to receive and store duty paid goods from various manufacturers in the said godown and export the same by following the procedure laid down in Ministry's Circular No.294/10/94-CX, dated 30.01.1997. The said Assistant Commissioner vide his letter dated 04.10.2011 granted permission to the applicant in reply to their above intimation. Copies of the application of the applicant and the reply of the Assistant Commissioner, referred to above, were enclosed as Annexures 1 & 2 to the replies to the show cause notices. In pursuance of the above-referred Circular, prior to effecting clearance of goods for exports, the applicant had submitted applications alongwith ARE-1 Forms in original and copies of corresponding excise invoices in respect of each clearance to the jurisdictional Central Excise Superintendent of their Daman godown for necessary action. Out of nine (9) cases of rebate claims involved in the present case, in two cases, viz., in respect of ARE-1 Nos.01/11-12 dated 09.10.2011 and 02/11-12 dated 11.11.2011, the jurisdictional Central Excise Officers of Daman godown allowed the exports under self-sealing procedure,



although necessary applications were made to them for physical supervision of the exports. However, in all the remaining 7 cases, the jurisdictional Central Excise Officers of Daman godown had signed all the copies of the respective ARE-1 Forms, as can be seen from the copies of rebate claims involved in the instant case attached as Annexures 3 to 9. Hence the findings of the Assistant Commissioner and the Commissioner (Appeals) that the goods involved in all the 9 rebate claims were exported under SRP without sealing and supervision of the officers are incorrect and against the facts as held by them.

5.1 Grounds of R.A.Nos.198/46/14-RA, 198/47/14-RA and 198/48/14-RA (filed by the department)

5.1.1 The grounds of all the above-mentioned three revision applications filed by the department are the same as the grounds of rejection of rebate claims mentioned above in R.A.No.195/912/13-RA, viz.,

a) goods did not move directly from the factory of manufacture for exports to the port of shipment in terms of condition (a) prescribed under Notification No.19/2004-C.E.(N.T.), dated 06.09.2004;

(b) the Head Office of the respondent was neither a factory of the manufacturer nor a warehouse registered in terms of rule 20 of the Central Excise Rules, 2002 nor the procedure laid down in Circular No.579/16/2001-CX dated 26.06.2001 was followed; and

(c) and that the rebate claims in question did not fall within the jurisdiction of the Assistant Commissioner, Central Excise, Division-II, Ankleshwar for the purpose of sanction.

5.1.2 In addition, the Department relied upon the following case-laws. CCE, New Delhi vs. Hari Chand Shri Gopal – 2010 (260) E.L.T. 3 (S.C.)CCE, Chandigarh vs. Indian Overseas Corporation – 2009 (235) E.L.T. 405 (H.P.)

6.1 Cross Objections filed by M/s Alkem Laboratories Ltd. to the above 3 R.A.s filed by the department.

6.1.1 M/s Alkem Laboratories Ltd. filed cross objections to the above 3 R.A.s contending on similar grounds as mentioned in Paras 4.1.1 to 4.1.4 above.



6.1.2 As regards the applicability of case law of CCE, New Delhi v. Hari Chand Shri Gopal [2010 (260) ELT 3 (S.C.)], the said case law had dealt with substantial compliance of the procedure set out in the Central Excise Rules, 1944 as a pre-condition to avail the benefit of an exemption notification. The respondentsubmitted that they had fully complied with the conditions of Notification No.19/2004-C.E.(N.T.) dated 6.9.2004 and the procedure given in CBEC Circular No.294/10/94-CX dated 30.01.1997 in respect of the exports of goods made by them and that the Assistant Commissioner has not properly interpreted the conditions of the said Notification and the CBEC's Excise Manual of Supplementary Instructions 2005 read with the above-mentioned Circular. The department, in the above 3 R.A.s, without considering the above facts relied on the above case law against them and that the above case law, on the contrary, is very much in their favour.

6.1.3 As regards the applicability of case law of CCE, Chandigarh v. Indian Overseas Corporation [2009 (234) ELT 405 (HP)], the said case law had dealt with erstwhile Notification No.41/1994-C.E.(N.T.) dated 12.9.1994, in which the condition was that the excisable goods shall be exported after payment of duty directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order; that it was not known from the said case law whether the party concerned (Respondent) had followed the procedure laid down in CBEC Circular No.294/10/94-CX dated 30.01.1997; that it was also not known as to whether the said Circular was in existence when the party concerned in this case had exported the goods in question; that the said Circular had not been discussed at all in the above case law andhence, it appeared that the party concerned had not followed the procedure laid down in the above Circular.

6.1.4 The existing Notification No.19/2004-C.E.(N.T.) dated 06.09.2004 prescribing conditions and procedure for rebate of duty on export of goods also provides the same condition as mentioned above in Notification No. 41/1994-C.E.(N.T.) dated 12.9.1994; that they had properly followed the procedure laid down in CBEC Circular No.294/10/94-CX dated 30.01.1997 and, therefore, have fully complied with the conditions of Notification No.19/2004-C.E.(N.T.), dated 06.09.2004; that in view of the above, the above case law is very much in favour of the respondent.

6.1.5. In support of the above contentions, they also rely on the Order No.1082/13-cx dated 16-8-2013 of the Joint Secretary to the



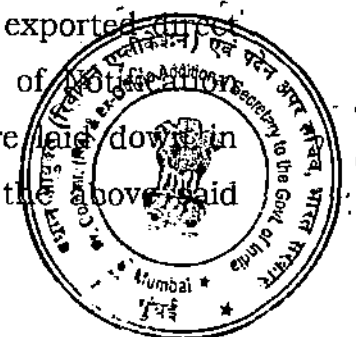
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Government of India (Revisionary Authority), passed in favour of their own case, wherein the Joint Secretary held that the CBEC Circular No.294/10/94-CX dated 30.01.1997 grants permission to export goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. The respondent submitted that the said Order was passed in favour of the respondent since they had complied with the procedure laid down in the above-referred Circular; that the issue involved in this Order is identical to the instant case of the respondent and, therefore, there is no infirmity in the Orders-in-Appeal dated 27.11.2013, 29.11.2013 and 31.12.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II and that the instant revision applications filed by the Department against the said Orders-in-Appeal, are not sustainable in law.

7. Personal hearing was held in all the above 4 Revision Applications on 25.05.2018. Shri M.S.Mohankrishnan, Consultant and Shri Sachinshankar Yadav, Executive appeared on behalf of M/s Alkem Laboratories Ltd. None was present from the department. M/s Alkem Laboratories Ltd. (applicant in Revision Application at Sl. No. 1 of the Table at para 1 and respondent in Revision Applications at Sl. No. 2 to 4 of the Table at para 1 above) pleaded that in view of the submissions made in Revision Application at Sl. No. 1 of the Table at para 1 above, and Orders in Appeal in Revision Applications at Sl. No. 2 to 4 of the Table at para 1 above, the Revision Application at Sl.No. 1 of the Table at para 1 is liable to be allowed and Revision Applications at Sl. No. 2 to 4 of the Table at para 1 above are liable to be dismissed.

8. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal. The issue involved in all these Revision Applications being common, they are taken up together and are disposed off vide this common order.

9. On perusal of case records, Government observes that department has rejected the rebate claims of M/s Alkem Laboratories Ltd. (RA No.195/912/13-RA) on the ground that the goods were not exported direct from factory or warehouse as laid down in condition 2(a) of Notification No.19/04-CE(NT) dated 06.09.04 and the relaxed procedure laid down in CBEC Circular No.294/10/97-Cx dated 30.01.97 relaxing the above said

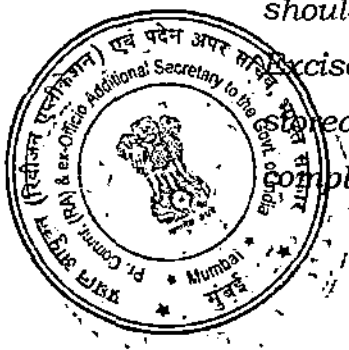


condition is not applicable to the said goods as the same are not easily identifiable; that the goods have been exported under SRP by the M/s Alkem Laboratories Ltd. themselves and no endorsement to the effect that the goods have been removed under physical control on part-A of the ARE-1 was noticed, but a stamp to the effect that "export under SRP without sealing & supervision by Central Excise Officer is seen on part A of the ARE1 no 01/11-12 dtd.09.11.2011; that M/s Alkem Laboratories Ltd, Alkem House, Senapati Bapat Marg, Lower Parel, Mumnbai is neither a factory, nor a warehouse registered in terms of Rule 20 of Central Excise Rules, 2002; that conditions prescribed in CBEC Circular No. 579/16/2001-CX dated 26.06.2001 not fulfilled; that the claim cannot be entertained by the Division Office as the same had not been removed / cleared directly from the factory of manufacture to the port of export.

10. As against above, the exporter viz. M/s Alkem Laboratories Ltd. herein has submitted that as per condition (ii) prescribed in the table below to Part I of Chapter 8 (EXPORT UNDER CLAIM FOR REBATE) of CBEC's Excise Manual of Supplementary Instructions, 2005, a general permission has been granted for exporting the duty paid goods from a place other than the factory or warehouse; that they had followed the procedure prescribed in the CBEC Circular No.294/10/97-Cx dated 30.01.97 while exporting the goods in question.

11. Government notes that the admissibility of these rebate claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.97. The relevant paras of said Circular are as under:

*"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/ not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the*





goods from the manufacturer or his dealer and furnish the following information :

- (a) Name of Exporter
- (b) Full description of excisable goods along with marks and/or numbers
- (c) Name of manufacturer of excisable goods
- (d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.
- (e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR-4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.



8.6 The disposal of different copies of AR4 forms should be in the following manner :

(i) the original and duplicate copies are to be returned to the exporter for being presented by him along with his shipping bill, other documents and export consignment at the point of export.

(ii) triplicate and quadruplicate copies to be sent to the Superintendent In-charge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate and quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "goods exported - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt). He will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Range Division / Commissionerate indicating name of the exporter's godown 'warehouse etc.' are located and where AR-4 is prepared, AR-4 No. and date, description of item corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate and quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the Superintendent In-charge of the Range from where the goods have been exported for his record.

(iv) the sextuplicate copy will be given to the exporter for his record.

8.7 The goods, other than ship stores, should be exported within a period of six months from the date on which the goods were first cleared

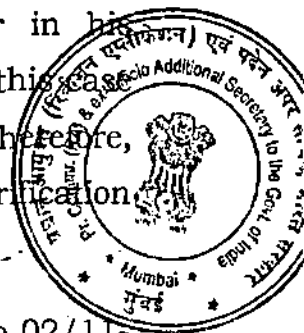


*from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).*

*8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."*

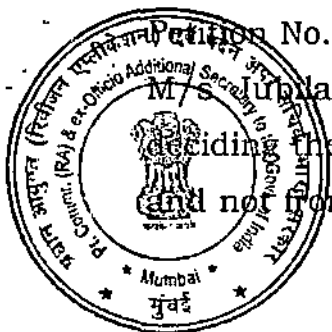
12. Government observes that in these cases, the ARE-I forms (except ARE-1 no 01/11-12 dtd. 09.11.2011 & ARE-1 no 02/11-12 dtd.11.11.2011 which were under SRP without sealing & supervision by Central Excise Officer) prepared by both manufacturer and exporter, M/s Alkem Laboratories Ltd. contain the description of export goods, Batch/Mark No. duty paid details, Central Excise Invoice & Commercial Invoice No. The Shipping Bill has the Reference of relevant ARE-I Nos. The Part-II on reverse of ARE-I contains the Customs Certification about export of goods vide relevant Shipping Bills. Customs has certified that goods mentioned on ARE-I have been exported vide relevant Shipping Bill. At the same time Part-1 on reverse side of ARE-I has the endorsement of Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying /stored with the particulars given in ARE-I Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-I Form and permit export. In this no contrary observation is made by Central Excise Officers and therefore, they have made endorsement in ARE-I after doing the requisite verification and allowed exports.

13. As regards ARE-1 no 01/11-12 dtd. 09.11.2011 & ARE-1 no 02/11-12 dtd.11.11.2011 which were under SRP without sealing & supervision by Central Excise Officer and where there was no examination by the



jurisdictional officers of Central Excise, Government finds that there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In this case, in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and applying the same analysis to the instant case, Government finds that in shipping bill No. 6148469 dated 08.11.2011 there is cross reference of ARE-1 No. 01 dated 09.11.2011 and vice-versa. Further, description, weight and quantities exactly tally with regard to description mentioned in mentioned in ARE-1 and other export documents including Shipping Bill and export invoices. Government finds similar correlation in respect of ARE-1 Nos 278 dated 02/11-12 dtd.11.11.2011 from the copies of the export documents. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of customs officer at the port of export, on part B of all the aforesaid three ARE-1s also conclusively support the same observation.

14. As regards refusal of rebate claim on the ground that M/s Alkem Laboratories Ltd, Alkem House, Senapati Bapat Marg, Lower Parel, Mumbai is neither a factory, nor a warehouse registered in terms of Rule 20 of Central Excise Rules, 2002 nor the conditions prescribed in CBEC Circular No. 579/16/2001-CX dated 26.06.2001 were followed, Government observes that Hon'ble Bombay High Court in its Judgement dated 22.12.2014 in Writ Petition No.10530 of 2013 in the case of Commissioner of Central Excise Vs M/s Jubilant Organosys [reported in 2015 (322) E.L.T. 50 (Bom.)], while deciding the similar issue of duty paid goods exported from dealer's godown and not from a warehouse approved under Rule 20 of Central Excise Rules,



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2002, and where Jurisdictional Superintendent got duty payment verified from originating Range Superintendent and No distinction or difference noted in goods cleared from warehouse and forwarded for onward export, and while holding that once exporter submits proof of goods having been actually exported to satisfaction of rebate sanctioning authority, goods were clearly identifiable and co-relatable with goods cleared from factory on payment of duty, procedural requirement (of C.B.E. & C. Circular No. 294/10/97-CX., dated 30-1-1997) can be waived, observed as under :

*.....Once the exporter submits proof of the goods having been actually exported to the satisfaction of the rebate sanctioning authority, the goods were clearly identifiable and co-relatable with the goods cleared from factory on payment of duty, then, para 6 of the Circular issued by the Board enables waiving of or technical departure from procedural requirements. Those not having any revenue implications that they can be condoned.*

15. As regards the jurisdiction for filing the rebate claim , Government observes that as per provisions of Notification No. 19/2004-C.E. (N.T.) the rebate claim is to be filed with the Assistant Commissioner/Deputy Commissioner of Central Excise having jurisdiction over factory of manufacturer or warehouse or the Maritime Commissioner. In the instant case M/s Alkem Laboratories Ltd. filed the rebate claim with Assistant Commissioner/Deputy Commissioner of Central Excise having jurisdiction over factory of manufacturer viz. M/s Galpha Laboratories Ltd., Ankleshwar and therefore, the rebate claim was filed by M/s Alkem Laboratories Ltd before the appropriate authority.

16. Government also notes that GOI vide Order No.1082/13-Cx dated 16.08.2013 in their own case, viz. M/s Alkem Laboratories Ltd., involving similar issue as in the instant case, has upheld the Order of the Commissioner (Appeals) allowing the rebate claims when the goods manufactured by M/s Galpha Laboratories Ltd., Ankleshwar were exported by M/s Alkem Laboratories Ltd., Dabhel Daman. Government also relies on its Order No. 59-81/2018-Cx dated 16.03.2018 Re: Cipla Ltd involving similar issue.

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17. In view of above discussions and findings, Government holds that the rebate claims are admissible to M/s Alkem Laboratories Ltd., in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, subject to verification of duty paid on the exported goods.

18. Accordingly, Government sets aside Order in Appeal No. SUR-EXCUS-002-APP-174-13-14 dated 30.08.2013 and allows the Revision Application No.195/912/13-RA filed by M/s Alkem Laboratories Ltd. on the above terms.

19. Government further observes that the subsequent rebate claims in respect of goods exported in a similar manner were also rejected by the original adjudicating authority vide Orders in Original Nos. mentioned against Sl. No. 2,3 & 4 of the Table at para 1 above on the same grounds viz. *"that the goods did not move directly from the factory of manufacture for exports to the port of shipment in terms of condition (a) prescribed under Notification No.19/2004-C.E.(N.T.), dated 06.09.2004; that the premises from where the goods were exported were not registered with the Department and that the said premises did not fall in the jurisdiction of the Assistant Commissioner having jurisdiction over the factory of manufacture of the said goods with whom the rebate claims in question were filed"*, as discussed at para 2 above.

20. Being aggrieved by the said Orders in Original, M/s Alkem Laboratories Ltd. filed appeal before the Commissioner (Appeals), Central Excise and Customs, Surat-II. The Commissioner (Appeals) allowed the appeals filed by M/s Alkem Laboratories Ltd., vide his Orders in Appeal No. mentioned at Sl. No. 2,3 & 4 of the Table at para 1 above.

20. Being aggrieved by Orders in Appeal mentioned at Sl. No. 2,3 & 4 of the Table at para 1 above, Commissioner of Central Excise, Surat-II, filed Revision Applications Nos. 198/46/14-RA, 198/47/14-RA and 198/48/14-RA before Government on the grounds mentioned at para 5.1 supra.

21. As the facts of the case involved in these 3 Revision Applications (Sl. No. 2, 3, 4 of the Table at para 1 above) filed by Commissioner (Appeals),



Central Excise and Customs, Surat-II are identical to the facts of Revision Application No.195/912/13-RA filed by M/s Alkem Laboratories Ltd. (Sl. No. 1 of the Table at para 1 above) which is discussed in detail at paras 10 to 18 supra and decided in favour of M/s Alkem Laboratories Ltd., Government does not find infirmity in Order in Appeal Nos. SUR-EXCUS-002-APP-249-13-14 dated 27.11.2013, SUR-EXCUS-002-APP-251-13-14 dated 29.11.2013 and SUR-EXCUS-002-APP-270-13-14 dated 31.12.2013 passed by Commissioner (Appeals), Central Excise and Customs, Surat-II and hold that that the rebate claims are admissible to M/s Alkem Laboratories Ltd., in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, subject to verification of duty paid on the exported goods. The impugned orders mentioned above are modified to this extent.

22. Revision Applications Nos. 198/46/14-RA, 198/47/14-RA and 198/48/14-RA are dismissed being devoid of merit.

23. All the four Revision Applications mentioned at Sl.No 1 to 4 of the Table at para 1 above are disposed off in terms of above.

24. So ordered.



*(Signature)*  
30.10.2014

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

ORDER No. 363-366/2018-CX (WZ) /ASRA/Mumbai Dated 30.10.2014

To,

M/s Alkem Laboratories Ltd.,  
Alkem House, Senapati Bapat Marg,  
Lower Parel, Mumbai – 400 013.

Copy to:

1. The Commissioner of GST & CX, Vadodara –II, GST Bhavan,  
Subhanpura, Vadodara 390 023.

**ATTESTED**

*(Signature)*  
30.11.18  
S.R. HIRULKAR  
Assistant Commissioner (R.A.)

2. The Commissioner of GST & CX, (Appeals) Central Excise Building, 1<sup>st</sup> Floor Annexe, Race Course Circle, Vadodara 390 007
3. The Deputy / Assistant Commissioner, GST & CX Vadodara -II, GST Bhavan, Subhanpura, Vadodara 390 023.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard file.
6. Spare Copy.

