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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/551/2013-RA
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Date of Issue: 20/11/18

369-370
ORDER NO. /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.

Applicants : M/s Ions Pharma.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Two Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal Nos.
BC/479/RGD(R)/2012-13 dated 21.12.2012 and
BC/513/RGD(R)/2012-13 dated 22.1.2013 both passed by
the Commissioner(Appeals), Central Excise, Mumbai-III.



ORDER

These two Revision Applications have been filed by the M/s Ions Pharma (hereinafter referred to as "the applicant") against the two Order-in-Appeal Nos. BC/479/RGD(R)/2012-13 dated 21.12.2012 and BC/513/RGD(R)/2012-13 dated 22.1.2013, both passed by the Commissioner(Appeals), Central Excise, Mumbai-III wherein he rejected both the appeals filed by Applicant.

Sl. No	RC No. & date	ARE No. & Date	Mate Receipt date	Amount Claimed (Rs.)	O-in-O & date	O-in-A & date
1	11043/1-12 dated 15.09.11	73 dated 31.10.10	i) 4.02.11 ii)13.06.11	231750	1436/2012-13/DC(R)/RGD dated 28.8.12 Rejected 234994	BC/479/RGD(R)/2012-13 dated 21.12.12
2	23027 dated 06.02.12	098 dated 21.01.11	i) 11.07.11 ii)17.09.11	231750	1355/2012-13/DC(R)/RGD dated 22.8.12 Sanctioned 1,39,050/- Rejected 92,700/-	BC/513/RGD(R)/2012-13 dated 22.1.13

2. The issue in brief is that the applicant, a merchant exporter, had filed 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.

2.1 In respect of Sl. No. 1, the Dy. Commissioner of Central Excise (Rebate) Raigarh, vide Order-in-Original No. 1436/2012-13/DC(R)/RGD dated 28.8.2012 rejected the rebate claim of Rs. 2,34,994/- as the goods were shipped beyond 6 month under Section 11B of the Central Excise Act, 1944 read with Rule 18



of the Central Excise Rules, 2002. The Applicant then filed an appeal with the Commissioner(Appeals), who vide BC/479/RGD(R)/2012-13 dated 21.12.2012 rejected the appeal and the Order-in- Original sustained.

- 2.2 In respect of Sl. No. 2. the Dy. Commissioner of Central Excise (Rebate) Raigarh, vide Order-in-Original No. 1355/2012-13/DC(R)/RGD dated 22.8.2012 sanctioned the rebate of Rs. 1,39,050/- under the provisions of Section 11B of Central Excise, 1944 read with Rule 18 of the Central Excise Rules, 2002 and rejected Rs. 92,700/- as the goods were shipped beyond 6 month. under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. The Applicant then filed an appeal with the Commissioner (Appeals), who vide BC/513/RGD(R)/2012-13 dated 22.1.2012 rejected the appeal.

3. Being aggrieved, the Applicant filed these Revision Applications on the following grounds:

3.1 The Deputy Commissioner(Rebate) have gravely erred by rejecting and by allowing partially the claims of the applicants.

3.2 In respect of Sl. No. 1, the Dy. Commissioner of Central Excise (Rebate) Raigarh, Order-in-Original No. 1436/2012-13/DC(R)/RGD dated 28.8.2012 is not legal, proper and correct on the following grounds :

- (a) Out of 5000kgs of materials, 3700 kgs were exported within 6 months period and only 1300 kgs of material could be exported after 6 months period which is only a procedural mistake only.
- (b) They had produced all the relevant documents such as Shipping Bill, Dill of Lading, Mate Receipt, etc. as evidential to proved that 3700 kgs of material was



exported within 6 months from the date of clearance from the factory.

- (c) The findings of the Lower Authority was not correct, when it states that ARE-1 No. 050 dated 18.08.2010 was not submitted. They had submitted the same on 26.04.2012
- (d) Out of two reasons for rejecting the rebate claim one is that the goods were exported beyond 6 months. The lower authority did not see that duty was paid on the materials cleared and goods were export out ultimately.
- (e) The Dy. Commissioner(Rebate) had not taken into account any evidence which was produced before him on the issue by way of several letters enclosed with attachments.

3.3 In respect of Sl. No. 2, the Dy. Commissioner of Central Excise (Rebate) Raigarh, Order-in-Original No. 1355/2012-13/DC(R)/RGD dated 22.8.2012 is not legal, proper and correct to the extent it did not allow the full claim of rebate on the following grounds:

- a) Out of 5000kgs of materials, 3000 kgs were exported within 6 months period and only 2000 kgs of material could be exported after 6 months period which is only a procedural mistake only and more due to commercial exigencies.
- (b) There has never been violation of any Substantial law by exporting goods after a period of 6 months from the date of clearance from the factory.
- (c) In order to grant rebate claim fully, the lower authority had to see that duty was paid on the goods and same duty paid goods were exported. Foreign exchange was earned and received and the same was proved beyond any



doubt when the concerned authority did not question about that.

(d) The justice will be denied when the claim of rebate is not allowed to them for the export of goods when though beyond 6 months as it is purely technical one.

3.4 The Principles of Natural Justice were not followed. By not exporting the goods within 6 months period are only procedural mistake/ technical infraction. It should have been appreciated by the lower authority that payment of duty has been made and export has taken place. In this they relied in the case of

- (a) IN RE : Harrison Chemicals REM (2006) ELT (171) GOVT. OF INDIA and
- (b) Commissioner of Central Excise Vs Birla Tyres 2005 (179) ELT 417.

3.5 : Prayed that the rebates may be sanctioned and granted fully and not partially.

4. A personal hearing in the case was held which was attended by Shri Vijaykumar Shahasane and Shri Rajeev Shahasane, Advocates on behalf of the Applicants. The Applicants reiterated the submission in two Revision Applications and written submission filed today. It was pleaded that since these are minor procedural infraction, therefore the Revision Applications may please be allowed and Order-in-Appeals may be set aside.

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 records, Government observes that

6.1 In respect of Sl. No. 1-



Details of rebate claim	certification by the Custom Officer on ARE-1 No.73	Under S/B the nos of ARE-1	certification by the Custom Officer on ARE-1No. 50 dt 10.8.10		Remarks
Rebate claim of Rs. 2,31,750/- based on ARE-1 No.73 dt. 31.10.10 Quantity 5000 kgs	(i) S/B No. 9339848 and M.R. 48368 dated 14.02.11	ARE-1 No. 73 dt 31.10.10	-	-	M.R. 48368 dt 14.02.2011 shows description as "Imitation Jewellery and Bindi"
	Total 172 drums (4300kgs)	ARE-1 No.50 dt 10.8.10	(i)S/B No 8997371dt 29.10.10 (ii)S/B No 9148095 dt 16.12.10	No remarks of S/B No. 9339849 dated 14.02.11 in ARE-1 50 dt. 10.8.2010	
	(ii) S/B No. 3998194 dt 07.06.11 and M.R 793 dated 07.06.2011.(actual 13.06.2011) Total 82 drums(2050 kgs)	ARE-1 No. 73 dt 31.10.10 ARE-1 No.98 dt 23.01.11	- Copy of ARE-1 No. 98 dt. 23.01.11 not in the file.		

The Applicant had filed rebate claim of Rs. 2,31,750/-based on ARE-1 No. 73 dated 31.10.2010 and Central Excise Invoice No. 73 dated 31.10.2011 of 200 drums (5000 kgs) of Tetra Butyl Ammonium Hydrogen Sulphate and the Original Authority had shown the rejection amount of claim as Rs. 2,34,994/-. The Government notes that the rejected amount is more than what the Applicant had filed in their claim. Hence the amount rejected shown in the Order-in-Original 1436/2012-13/DC(R)/RGD dated 28.8.12 is incorrect. Further, in Para 6, 7



& 8 of the Order-in-Appeal Nos BC/479/RGD(R)/2012-13 dated 21.12.12. the Commissioner(Appeal) has already discussed the issue in detail. Hence the Government notes that there is no correlation between the shipping bills and the ARE-1s submitted by the Applicant. The documents submitted do not prove the Applicant's claim that all the goods shown in ARE-1 were exported and the same were exported within 6 months of clearance from the factory. Hence the Commissioner(Appeals) had correctly rejected claim.

6.2 In r/o Sl. No. 2, the Government observes that the Applicant had filed rebate claim of Rs. 2,31,750/-based on ARE-1 No. 098 dated 21.01.11 and the Original Authority had sanctioned the rebate claim of Rs. 1,39,050/- as the goods were shipped within stipulated period and rejected the claim of Rs. 92,700/- the goods were shipped beyond 6 months. The Government notes that the Applicant had stated that the export could not take place within 6 months from the date of clearance because the overseas customer had instructed them to withhold the same. In terms of the condition 2(b) of Notification No. 19/2004, the Applicant should have taken the requisite extension permission from the Commissioner of Central Excise, which the Applicant did not. Hence the Commissioner(Appeals) had correctly reject the claim of Rs. 92,700/-.

7. Further, the aforesaid mentioned issue stands decided in the case of M/s Cipla, the Government Order No. 40/2012-CX dated 16.01.2012. After discussing the issue at length, the Government at Para 9 of its order observed as under :

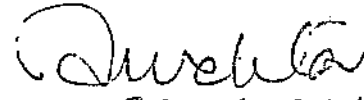
" 9. Government notes that as per provision of Condition 2(b) of Notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by the Commission



Central Excise. In this case, undisputedly, goods were exported after lapse of aforesaid period of 6 months and applicant has not been granted any extension beyond 6 months by Commissioner of Central Excise. This is a mandatory condition to be complied with. Since the mandatory condition is not satisfied the rebate claim on goods exported after 6 months of their clearance from factory is not admissible under Rule 18 read with Notification 19/04 CE (NT) dated 06.09.2004."

8. In view of the foregoing, Government hold that the Applicant is not entitled to rebate of duty paid on goods exported after six month of clearance from the factory and as such, Government finds no infirmity in the impugned Order-in-Appeals and therefore upholds the same and dismisses both the Revision Applications filed by the applicant being devoid of merits.

9. So, ordered.


30.10.2018

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

369-370
ORDER No. /2018-CX (WZ)/ASRA/Mumbai DATED 30.10.2018.

To,
M/s Ions Pharma
501, Damji Shamji Trade Centre,
Vidya Vihar,
Mumbai 400 086.

ATTESTED



S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner, Central Excise, (Appeals) Raigad.
2. The Dy / Asstt Commissioner (Rebate), GST & CX Mumbai, Belapur.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

