**REGISTERED**
**SPEED POST**


**F.No.195/459/12-RA**
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 2/3/16

**ORDER NO. 39/2016-CX DATED 26.02.2016** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

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| SUBJECT | : | Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. US/198/RGD/12 dated 20.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai |
| Applicant | : | M/s. Bliss GVS Pharma Ltd. |
| Respondent | : | Commissioner of Central Excise, Raigad. |

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## ORDER

This Revision Application is filed by M/s. Bliss GVS Pharma Ltd, against the Order-in-Appeal No. US/198/RGD/12 dated 20.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that M/s. Bliss GVS Pharma, a merchant exporter situated at 6-29-A, Udit Mittal Estate, Andheri-Kurla Road, Andheri (E) Mumbai-50, filed rebate claims bearing Nos. 17523,17524,17525 all dated 15.11.2010 under Rule 18 of Central Excise Rules,2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended. The rebate claims amounting to Rs. 384013/- were sanctioned vide Order-in-Original No. 426/10-11 dated 10.06.2011. Upon examining the above Order-in-Original, the order was reviewed and appeal was filed before Commissioner (Appeals) on following grounds:-

(i) There is no Triplicate 'pink' copy attached with the subject rebate claim and there is no reason mentioned for not giving Pink/Triplicate copies and granting rebate in absence of 'Pink' triplicate copy.

(ii) MR date at Sr. No. 2 & 3 is shown as 07.07.2010 whereas it is found to be 02.07.2010.

(iii) Central Excise Invoice No. at Sr. No. 2 is shown as 130 whereas it is found to be 130 & 131.

(iv) Central Excise Invoice No. at Sr. No. 3 is shown as 131 whereas it is found to be 136 & 137.

(v) The certificate at Sr. No. 3 (c) has not be given in ARE-1 No. 8 dated 16.06.2010.

(vi) The certificate at Sr. No. 3 (c) (yellow copy) has not be given in ARE-1 No. 9 dated 21.06.2010.

(vii) The white (original) copy is not attached with the relevant rebate claims.

3. Being aggrieved by the said Order-in-Original, the Department filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 That the sanctioning authority duly acknowledge all the documents as stated in our letter dated 15.11.2010. and para 2 of the Order-in-Original No. 426/10-11/Ac(Rebate)/Raigad dated 10.06.2011 clearly states that the claimant has produced 07 documents in support of their claim which includes Original and Triplicate ARE-1.

That as per the CBEC circular the sanctioning authority has not issued any deficiency memo to the applicant for non submission of Original and Triplicate copy of ARE-1.

4.2 The applicant submitted that the department has not disputed that the goods on which duty has been paid were physically exported and export proceed has not been received by the applicant. It was also not disputed by the department that the goods which were exported were duty paid. In para 7 of the Order-in-Original No. 426/10-11/AC(Rebate)/Raigad dated 10.06.2011 the sanctioning authority confirm and verified the physical export took place from the JNCH and duty payment particulars from the jurisdictional Range Superintendent.

4.3 That as per para 3 (xii) & (xv) of notification No. 19/2004 CE(NT) dated 06.09.2004 they have received the Original, Duplicate and the Triplicate ARE-1 in a tamper proof sealed cover from the Customs Authority and the jurisdictional Range Superintendent to be presented to the rebate sanctioning authority. It was also confirmed by the sanctioning authority in his Order-in-Original No. 426/10-11/AC(Rebate)/Raigad dated 10.06.2011.

4.4 That without prejudice whatever stated here in above, in the absence of Original and Triplicate ARE-1, the sanctioning authority very well confirm and verified that the physical export has been taken place and duty has been paid from the duplicate copy duly endorsed by the Customs authority and payment of duty particular from the jurisdictional Range Superintendent in charge of factory respectively. The sanctioning authority has taken care of these aspects and also elaborated in his Order-in-Original at para 7 while sanctioning the rebate claim.

4.5 That it is upheld by the Revisionary Authority, Department of Revenue that substantial compliance of procedure laid down in the Notification claim for rebate cannot be denied merely on procedurals and technical lapses. M/s. Banaras beads Ltd., 2011(272) E.L.T. 433 (G.O.I), M/s. ACE Hygiene products Pvt. Ltd., 2012 (276) E.L.T.131(G.O.I), M/s. Kumud Drugs Pvt. Ltd., 2010(262) E.L.T.) 1177 (Commissioner Appeals) and M/s. Sanket Industries Ltd., 2011(268) E.L.T.125 (G.O.I).

5. Personal Hearing was scheduled in this case on 13.07.2015, 10.08.2015 and 10.09.2015. Hearing held on 13.07.2015 was attended by Shri Nariz K. Shaikh, Advocate and Shri Gajanan Dixit, Genral Manager on behalf of applicant and they reiterated grounds of R.A. Nobody attended hearing on behalf department. The department vide their letter dated 24.09.2015 mainly reiterated contents of impugned Order-in-Appeal and mentioned specifically that as per records original and triplicate copies of ARE-1 were not submitted. Only duplicate copy of ARE-1 is submitted.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government notes that the applicant's rebate claim was initially sanctioned by the original authority. The department filed appeal before Commissioner (Appeals) contesting that there were certain discrepancies in documents submitted by the applicant. Commissioner (Appeals) allowed department's appeal. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government notes that the department is mainly contesting that the applicant did not submit original and triplicate copy of the ARE-1. Against this, the applicant contended that they have submitted these copies along with their rebate claim. On perusal of impugned Order-in-Original, Government observes that in 'brief facts' portion of impugned Order-in-Original, the original authority in unambiguous terms has mentioned that the applicant did submit original and triplicate copy of ARE-1. Further, no deficiency memo was issued by the department for submission of said documents. Going further, the original authority in 'Finding portion' of impugned Order-in-Original, has clearly held that the export of goods established by Customs endorsement on part-B of the original/duplicate copies of ARE-1 and duty payment is proved by endorsement on triplicate copy. As such, Government finds force in the applicant's plea that if the original / triplicate copies of ARE-1 were submitted along with rebate claim cannot be rejected outright.

9. Government further notes that contrary to the above, the Commissioner (Appeals) has held that out of the 07 issues the 02 main issues involved to determine the admissibility of the rebate claim is non submission of original and triplicate copy of ARE-1s, that duty paid nature of exported goods cannot be established and hence the respondents are not entitled for rebate. Commissioner (Appeals) has further held that other issues cannot be considered at this stage since the rebate is inadmissible on the grounds discussed above.

10. Government also notes that the applicant has mainly relied upon the observations of the original authority regarding the submission of original and triplicate copies of ARE-1. They have failed to place any other evidence on record in support of main contention that the original and triplicate ARE-1s were indeed submitted by them.

11. In view of the above contradictory position, Government finds that based on documentary evidence it needs to be verified whether the original (white) and triplicate (pink) copies of ARE-1 were furnished with the rebate claim or not. If these are found to be available on record as having been furnished at time of filing the rebate claim and are in order, then the other issues as listed in para 2 above will also be examined for determining the admissibility of the rebate claim by the original authority.

12. In view of above, Government sets aside the impugned Order-in-Original and Order-in-Appeal and remands the case back to the original authority for fresh decision after taking into account the observations as above and facts of the case along with the original documentary evidence as available on record. A reasonable opportunity of hearing will be given to the concerned.

13. Revision Application is thus disposed off in above terms.

14. So, ordered.

(**RIMJHIM PRASAD**)
Joint Secretary to the Government of India

M/s. Bliss GVS Pharma Ltd.,
102, Hyde Park, Saki Vihar Road,
Andheri, Mumbai-400072.

Attested.

(Vinsgwat Sharma)
Assistant Commissioner
(Revision Application)
(राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
Govt of India
New Delhi

**ORDER NO. 39/2016-CX DATED 26.02.2016**

Copy to:

1. The Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Sectior-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.

2. The Commissioner of Central Excise (Appeals-II) Mumbai Zone, 3rd Floor, Utpad Shulk Bhavan, Bhandra Kurla Complex, Bhandra (E), Mumbai

3. The Deputy Commissioner (Rebate) Central Excise & Customs, Maritime Commissionerate, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Sectior-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.

4. PA to JS(RA).

5. Guard File.

6. Spare copy.

ATTESTED

(B.P.Sharma )
OSD (Revision Application)

(भगवत शर्मा/Bhsgwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi