

REGISTERED
SPEED POST



F.No.195/1091& 1086-1088/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue..17/5/13

ORDER NO. 397-400/2013-CX DATED 17/05/2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No. 309/CE/CHD/2011 dated 11.10.11 & 311-313/CE/Chd/2011 dated 8.9.11 passed by the Commissioner of Central Excise & Customs (Appeals) Chandigarh-I

Applicant : M/s Cipla Limited, Solan

Respondent : Commissioner of Central Excise, Chandigarh-I

ORDER

These revision applications are filed by the applicants M/s Cipla Limited, Solan against the orders-in-appeal No. 309/CE/CHD/2011 dated 11.10.11 and 311-313/CE/Chd/ 2011 dated 8.9.11 passed by the Commissioner of Central Excise& Customs (Appeals) Chandigarh-I as given in the table below:

Sl. No	Name of the Applicant	Revision Application No.	Order-in-appeal No. & Date
(1)	(2)	(3)	(4)
1	M/s Cipla Limited, Solan	F.No.195/1091/11-RA	309/CE/CHD/2011 dated 11.10.11
2	M/s Cipla Limited, Solan	F.No.195/1086-1088/ 11-RA	311-313/CE/Chd/ 2011 dated 8.9.11

2. Brief facts of the case are that the applicants M/s Cipla Limited, Solan are engaged in the manufacture of P&P medicaments falling under Chapter 30 of the Central Excise Tariff. They are registered with the department and are availing exemption under Notifications No. 49 and 50/2003-CE(NT) both dated 10.06.2003. They filed 12 input stage rebate claims on 08.03.2010 under Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/04-CE (NT) dated 6.9.2004 on the grounds that the duty had been paid on the inputs used in the manufacture of exported goods. The adjudicating authority, vide impugned order No.311/AC1R/SML/2010 dated 6.5.10, sanctioned rebate claims amounting to Rs.1,19,246/- in 11 cases. However, in one case, rebate claim amounting to Rs.35,533/- was rejected on the grounds that the goods were exported after 12 months from removal of factory and/or goods had been exported as sample of no commercial value.

2.1 Similarly the adjudicating authority vide O-I-O No.245/AC/R/SML/2010 dated 29.4.10 & O-I-O No. 487/AC/R/SML/2010 dated 31.5.10 sanctioned rebate in 12 cases and rejected 15 rebate claims of the applicants on the grounds that the export was made after 7 to 12 months from the date of removal of goods and the goods were exported free of cost/export was not established.

3. Being aggrieved with the impugned orders-in-original, applicant filed appeal before Commissioner (Appeals), who upheld the impugned orders-in-original and rejected the appeal.

4. Being aggrieved with the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Central Government on the following common grounds:

4.1 It is a fact that the applicants have substantially complied with the provisions of Rule 18 and filed rebate claims in stipulated time limit. The Assistant Commissioner, Central Excise, Division - Shimla in their finding in Order-in-Original had observed and accepted the fact of compliance of provisions of Rules 18 of Central Excise Rules 2002 and Section 11 B of The Central Excise 1944. Applicant state that their said rebate claims have been rejected solely on the ground that the export has been taken place after the period of six month from the date of clearance from the factory & goods has been exported as samples of no commercial value/free of cost/exports not established. Applicant do agree that as per the procedure goods should be exported within six months from the date of dispatch from the factory or within such extended period as may be allowed. It is a procedural lapse on their part. However, it is an undisputed fact that the goods are been ultimately exported to foreign country. Therefore the Applicant pray that the procedural lapses may please be condoned and the genuine rebate claim please be grant to the Applicant.

4.2 Normally the Applicants are clearing the goods within a period of six months from the date of clearance from the factory. However in the present case it is exported after six months on the same export documents. As the consignment was in process of export the Applicants erroneously could not extend the validity the ARE-2 for further period of six months. Applicant pray for condonation for procedural lapse occurred on their part. There is no dispute as to the export of consignment out of India. Since goods have been exported out of India, the benefit given by law should not be denied merely on ground of procedural lapses. It is now settled vide Government of India, Ministry of Finance, Order Nos.527-528/2005 dated 18.1 I.2005, case law 2006 (204) ELT 632 (GOI) in the matter of Modern Process Printers that the Rebate Procedural Infractions of notification/circular are to be condoned if export have taken place actually and substantive benefit should not be denied.

4.3 The Applicants state that Applicants are claiming area based exemptions for finished products. Their finished products are thereby not liable for payment of central excise duty. The Applicant are claiming rebate of duty paid on inputs used in the manufacture of export goods since their finished goods are exempted from payment of duty under area based exemption. Therefore delay in export of goods beyond the period of six months does not any way affect the revenue.

Other case laws relied upon by the applicants are:

- OIA NO.SB/7 to 35/M-IV/09 dated 20.8.09 CCE (A) Mumbai Zone-I
- Mangalore Fertilizers Vs DC 1991 (55) ELT(437)

5. Personal hearing scheduled in the case on 21.2.13. Shri Anand Sharma, Manager Stores appeared on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, and perused the impugned Order-in-Original and Order-in-Appeal.
7. On perusal of records Government observes that the original authority has partly sanctioned rebate claims and partly rejected the claims on the grounds that the impugned goods were exported after 12 months/7 to 12 months from the date of clearance from the factory and/or exported as sample of no commercial value/export was not established. The Commissioner (Appeals) upheld the impugned orders-in-original. Now the applicants have filed these revision applications on the grounds stated at para (4) above.
8. Government observes that in the instant case the original authority has held that the goods were exported after expiry of 6 months from the date of clearance of the factory. The applicants too has admitted this fact. Government notes that in accordance with the power conferred under the said Rule 18, the Central Government has issued Notification No.21/2004-Central Excise (N.T.), which lays down the procedure for grant of rebate of the duty paid on excisable materials used in the manufacture or processing of export goods, on their exportation out of India, to any country except Nepal and Bhutan. According to para 5 of the notification, the goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to the notification and the procedures specified in Ministry of Finance (Department of Revenue) notification No.19/2004-Central Excise(N.T.), dated the 6th September, 2004 or in notification No.42/2001-Central Excise(N.T.), dated the 26th June, 2001 shall be followed. Further, in terms of para (2)(b) of the notification No.19/2004-CE(NT) dated 06.09.04, the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow. Thus, the plain reading of above provisions of law suggests that in order to claim rebate of duty under Rule 18, the excisable

goods must be exported within a period of six months from the date of clearance from the factory gate. Where for some reasons, the goods can't be exported within the prescribed period of six months, the claimant exporter can seek extension of the time beyond six months from the jurisdictional Commissioner of Central Excise.

9. Government observes here that the procedure for such rebate claims is given in the Chapter 7 of the CBEC's Manual of Supplementary Instructions, which reads as follows:

Para 2.1(1):

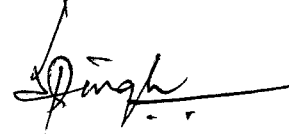
"The goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or manufacture or warehouse or other approved premises within such extended period as the Deputy/Assistant Commissioner of Centre Excise or Maritime Commissioner may in any particular case allow";

10. In these cases, the goods were undisputedly exported after six months of their clearance from factory. The applicant has failed to comply with the said mandatory condition of the Notification. Failure to comply with the mandatory condition of Notification cannot be treated as a procedural lapse as claimed by applicant. Since substantial condition is not complied with the ratio of case laws cited by applicant cannot be applied as the said case laws are for proposition that substantial benefit cannot be denied for procedural/technical lapses. In this case applicant has not furnished any valid extension granted by competent authority to export goods beyond six months, therefore the rebate claims were rightly rejected by the lower authorities.

11. In view of above position Government does not find any infirmity in the order of lower authorities therefore upholds the same.

12. Revision applications are rejected being devoid of merit.

13. So ordered.

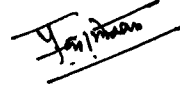


(D.P.SINGH)

Joint Secretary (Revision Application)

M/s Cipla Limited
Village Malpur Upper
P.O. Bhud, Nalagarh
Distt. Solan
Himachal Pradesh-173205

Attested



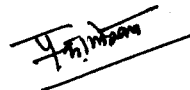
श. क. रामेश्वरम्/P K. RAMESHWARAM
विशेष कार्य जरी/OSD-II (RA)
वित्त मंत्रालय, (संगणक विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 397-400 /2013-Cx dated 17/05/2013

Copy to

1. Commissioner of Central Excise, Chandigarh, Plot No. 19, Sector-17-C, Chandigarh.
2. Commissioner (Appeals) Customs & Central Excise, Chandigarh. Plot No. 19, Sector-17-C, Chandigarh.
3. Asstt. Commissioner of Central Excise, Shimla Division, Shimla-4
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(P.K.Rameshwaram)
OSD (RA)