F. No. 195/440/16-RA

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. 195/440/16-RA / 9333 Date of Issue: 10/12/2018

ORDER NO. 409/2018-CX (WZ) /ASRA/MUMBAI DATED 30.11.2018 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.

Applicant : M/s. Amtec Health Care Pvt. Ltd.
5/502, Garden Estate,
Off. Pokhran Road No. 2,
Thane(W) 400 601

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/183/RGD/2016 dated 1.01.2016 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-II.

ORDER

This revision application has been filed by M/s. Amtec Health Care Pvt. Ltd., 5/502, Garden Estate, Off. Pokhran Road No. 2, Thane(W) 400 601(hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/183/RGD/2016 dated 1.01.2016 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-II.

2.1 The applicant had filed rebate claim under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 for an amount of Rs. 22,65,545/-(Rupees Twenty Two Lakhs Sixty Five Thousand Five Hundred Forty Five Only).

2.2 The goods viz. "NAPROXEN" were procured from M/s Dr. Reddy's Laboratories, Peddadevulapally, Tripuram Mandal, Nalgonda Dist. by the applicant without payment of duties under the cover of CT-1 certificates as detailed below:

Sr. No.	ARE-1 No. & date	Central Excise invoice no. & date	CT-1 No. & date mentioned on ARE-1	QTY	Value (Rs.)	Duty involved (Rs.)
1	347/13-14 dt. 31.10.13	347 dt. 31.10.13	19/13-14 dt. 30.10.13	5000 kgs.	9411600/-	1163274/-
2	138/13-14 dt. 25.06.13	138 dt. 25.06.13	11/13-14 dt. 26.04.13	2000 kgs.	3571200/-	441400/-
3	600/12-13 dt. 31.03.13	600 dt. 31.03.13	003/12-13 dt. 14.03.13	2000 kgs.	3571200/-	441400/-
4	139/13-14 dt. 25.06.13	139 dt. 25.06.13	010/13-14 dt. 26.04.13	1000 kgs.	1775650/-	219471/-

2.3 In all the above transactions, the goods had been obtained under the cover of B-1 Bond/CT-1 certificates issued under Rule 19 of the Central Excise Rules, 2002 for the purpose of export. However, the goods were not exported within the stipulated period of 6 months after they were cleared from the manufacturing unit as required under the provisions of Notification No. 19/2004-CE(NT) dated 6.09.2004, as amended, issued under Rule 18 of the Central Excise Rules, 2002. Payment made by the applicant – merchant exporter was in compliance of CT-1/B-1 Bond. The goods were originally cleared without payment of duty under CT-1/B-1 Bond for the purpose of export under Rule 19(2) of the Central Excise Rules, 2002. However, later on as the goods were not exported within the stipulated period of six months due to cancellation of export order, the payment of duties involved on the goods was made by the applicant on 30.07.2014 alongwith interest.

2.4 The applicant did not appear to have any permission to store non-duty paid goods removed from the manufacturers premises to their warehouse under Rule 20 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT) dated 26.06.2001, as amended. The applicant contended that the order for export of the same goods was received later on. The goods were therefore cleared for export on 15.08.2014 as per the date of Mate Receipt; i.e. beyond six months of the date of clearance from the factory of the manufacturer. This was in violation of the condition 2(b) of Notification No. 19/2004-CE(NT) dated 6.09.2004, as amended issued under Rule 18 of the Central Excise Rules, 2002. The applicant informed that the clearances had been effected in terms of the provisions contained in CBEC Circular No. 294/10/97-CX. dated 30.01.1997.

2.5 Since the goods were not exported within six months as stipulated under notification no. 19/2004-CE(NT) dated 6.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, the applicant paid the duties involved vide challan no. 34208 dated 30.07.2014 totaling to Rs. 26,61,030/-. They informed the payment particulars to the concerned Division on 7.11.2014 stating that the duty involved on the purchases against the CT-1's had been

paid alongwith interest and requested for cancellation of CT-1's. However, there was no evidence to show that the CT-1's had been cancelled. The applicant submitted that they had received export order for the same goods again and they had prepared ARE-1 No.'s 1, 2, 3, 4 and 5, all dated 31.07.2014 from their warehouse and have exported the goods on 15.08.2014; viz. the date of Mate Receipt.

3. On perusing the records, the rebate sanctioning authority observed that the original clearances of the goods from the manufacturer had been effected in the months of March 2013 to October 2013 whereas the actual dates of export were 15.08.2014; i.e. much after the expiry of the period of six months from the date of clearance from the manufacturing unit thus violating the condition of Notification No. 19/2004-CE(NT) dated 6.09.2004 as amended. He averred that it was not a procedural lapse but a violation of a mandatory condition. Reliance was placed upon para 8 & 9 of Govt. of India's Order dated 4.12.2012 issued vide F. No. 195/450/11-RA-CX passed by the Joint Secretary to the GOI under Section 35EE of the Central Excise Act, 1944 in the case of M/s SGI Sales Corporation, Shahdra where the facts and circumstances of the case were similar to the instant case. It was noted that the authority had in the said case held that the applicant had not produced documentary evidence from the competent authority that they had been granted extension of time beyond the period of six months; the time limit for export of goods, that the said non-compliance of the condition of six months cannot be treated as a mere procedural lapse, that the condition laid down had to be mandatorily complied with. The rebate sanctioning authority therefore rejected the rebate claim for Rs. 22,65,545/- vide Order-in-Original No. 376/15-16/Dy. Commr(Rebate)/Raigad dated 1.05.2015.

4. Aggrieved, the applicant preferred appeal before the Commissioner(Appeals). Their main ground was that the procedural infraction on their part should be condoned. Commissioner(Appeals) observed that the applicant had not exported the goods within the period of six months from the date of clearance from the factory premises. He further observed that the applicant had applied for extension of the period to export

the impugned goods much after the stipulated period of six months. However, permission for extension of the period to export the impugned goods had not been granted to them by the Commissioner of Central Excise. He observed that the applicable condition under Notification No. 19/2004-CE(NT) dated 6.09.2004 was that the excisable goods should be exported within six months from the date on which they are cleared for export from the factory of the manufacturer, that the stipulated condition is mandatory and not a procedural condition. Commissioner(Appeals) placed reliance upon the decisions of the Revisionary Authority in the case of M/s Ind-Swift Laboratories Ltd.[2014(312)ELT 865(GOI)]. Respectfully following the said decision, as in the present case applicant had not exported the goods within the prescribed period of six months, he held that the adjudicating authority had rightly rejected the rebate claim. He therefore upheld the order passed by the adjudicating authority and rejected the appeal filed by the applicant.

5. Aggrieved by the Order-in-Appeal, the applicant has filed revision application on the following grounds:

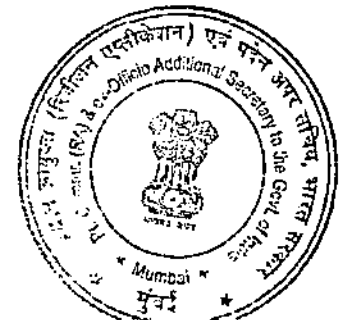
(i) The goods had originally been cleared without payment of duty for export under Rule 19 of the CER, 2002 read with Notification No. 42/2001-CE(NT) dated 26.06.2001 but could not be exported due to cancellation of order.

(ii) That they had paid the duty liability on the goods and discharged the liability of B-1 Bond for the goods which were not cleared for export within 6 months.

(iii) In so far as the condition of Notification No. 19/2004-CE(NT) dated 6.09.2004 is concerned, they stated that the goods have not been directly cleared from the factory under claim of rebate. Therefore, the condition requiring the goods to be exported within six months is not applicable.

(iv) They stated that they had paid the duty payable on the goods on 30.07.2014 and had also filed the rebate claim on time.

(v) They contended that the case laws referred were in respect of cases where the goods had been cleared for export under claim of rebate



but not were not exported within six months and the exporter had failed to obtain extension as specified in the notification.

(vi) They placed reliance upon the judgment of the Supreme Court in the case of CCE, Calcutta vs. Alnoori Tobacco Products[2004 ELT 135(SC)] that one additional or different fact could make a world of difference in two different cases. Therefore disposal of cases by blindly placing reliance upon a decision is not proper.

(vii) Various legal forums have concluded time and again that taxes should not be exported.

(viii) They placed reliance upon para 8 of the judgment of the Hon'ble Bombay High Court in the case of Repro India Ltd. vs. UOI[2009(235)ELT 614(Bom)] holding that if the refund of duty paid on the goods is not allowed, then the exporter became internationally uncompetitive.

(ix) That there was no dispute about the duty paid nature of the goods or co-relation of the goods.

(x) They placed reliance upon para 13 of the decision of TVS Motors Co. Ltd., Mysore vs. CCE, Mangalore[2013(298)ELT 305(GOI)].

(xi) That while interpreting the law facilitating export-oriented schemes, interpretation should not be unduly restricted and technical interpretation of procedure should be avoided in order to not defeat the very purpose of such schemes that serve as export incentive to boost export and earn foreign exchange. They further stated that the Hon'ble Supreme Court had observed that any interpretation which is unduly restricting the scope of beneficial provision is to be avoided.

(xii) They placed reliance on the case laws of Suksha International & Nutan Gems & Anr.[1989(39)ELT 503(SC)], A. V. Narasimhalu[1983(13)ELT 1534(SC)], Om Sons Cookware Pvt. Ltd.[2011(268)ELT 111(GOI)], Reliance Industries Ltd.[2012(275)ELT 277(GOI)], Modern Process Printers[2006(204)ELT 632(GOI)], Non-Ferrous Materials Technology Development Centre[1994(71)ELT 1081(GOI)] & Nilkamal Ltd.[2011(271)ELT 476(GOI)].

6. The applicant was granted a personal hearing. Shri Vijay Kumar Joshi, Consultant appeared for personal hearing on 14.06.2018. He reiterated the submissions filed through revision application & written submissions filed on that day. It was submitted that in view of the submissions and the case laws substantive benefit of rebate may not be denied because of technical infractions. In the written submissions filed on 14.06.2018, they submitted that once there is proof of export, the time stipulation of six months to carry out export should not be considered rigidly or inflexibly. Reliance was placed upon the judgment of the Hon'ble Calcutta High Court in the case of Kosmos Healthcare Pvt. Ltd.[2013(297)ELT 345(Cal)]. It was averred that substantive benefit should not be denied for procedural lapses and that they were condonable. They further contended that the intention of the government was to export goods and not the taxes thereon. It was further submitted that the case laws relied upon by the Commissioner(Appeals) do not apply in the specific facts and circumstances of the applicants case.

7. The applicant filed written submissions on 19.06.2018 wherein they stated that they had filed a letter with the Commissioner of Central Excise, Mumbai-III requesting to grant permission for extension of time to export the goods to comply with condition 2(b) of the Notification No. 19/2004-CE(NT) dated 6.09.2004. They stated that they had vide their letters dated 8.07.2014 and 10.07.2014 requested to grant a permission for extension of time limit to export the goods beyond the period of 6 months due to cancellation of export orders by their clients and that their request letters had been acknowledged by a letter dated 15.07.2014 communicating "that the same is under process". However, after letter dated 15.07.2014, the applicants had not received any communication from the Office of the Commissioner regarding the extension of time limit till date. They have therefore contended that the request for extension of time limit/permission is deemed to be granted and therefore the substantial benefit of rebate cannot be denied. They also submitted photocopies of the BRC's, Shipping Bills, Export Invoice, Bill of Lading and Mate Receipts.

8. 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.

9. Government observes that the issue involved is whether the rebate claim filed by the applicant had rightly been rejected by the lower authorities on the ground that the applicant had failed to export the impugned goods within the stipulated period of six months as provided under condition no. 2(b) of Notification No. 19/2004-CE(NT) dated 6.09.2004 or not.

10. It is observed that condition no. 2(b) of Notification No. 19/2004-CE(NT) dated 6.09.2004 stipulates that "the 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." On going through the records of the case, it is seen that the applicant has not made any submission of having requested the Commissioner to extend the time for exporting the goods either before the rebate sanctioning authority.

11. On scrutinizing the photocopies of the letters dated 8.07.2014 and 10.07.2014, it is observed that they had purportedly been submitted by the applicant to the *Commissioner of Central Excise, Mumbai-III.* It would be pertinent to mention here that the claim for rebate was filed before the Maritime Commissioner. Needless to say, the Maritime Commissioner(the rebate sanctioning authority) being within the jurisdiction of Raigad Commissionerate would have no record of the receipt of the application for extension of time to export the goods beyond the initial period of six months or the action taken thereon.

12. Without prejudice to the observations recorded above in respect of the applicants claim of having filed for extension of time in respect of the instant rebate claim, it is observed that the letter dated 8.07.2014 has been filed in respect of invoice no. 600 dated 31.03.2013, invoice no. 139 dated 25.06.2013, invoice no. 138 dated 25.06.2013 and invoice no. 347 dated 31.10.2013. The letter dated 10.07.2014 mentions only one invoice no. 218 dated 24.09.2013. The present rebate claim is in respect of goods cleared

under invoice no. 347 dated 31.10.2013, invoice no. 138 dated 25.06.2013, invoice no. 600 dated 31.03.2013 and invoice no. 139 dated 25.06.2013. It is observed that these invoices find mention under the letter dated 8.07.2014 seeking extension of time for exporting the goods. It is observed that the letter requesting extension of time has been filed much after six months of the clearance of goods from the factory of Dr. Reddy's Laboratories. The date of the invoice issued last amongst the four invoices covered under the rebate claim is dated 31.10.2013 which is well over eight months from the date of clearance from the factory of Dr. Reddy's Laboratories. The goods covered under the remaining three invoices have been cleared over a year before the application for extension was filed before the Commissioner of Central Excise, Mumbai-III. The applicants submissions that the request for extension of time limit would be deemed to have been granted, is a bald assertion made to shift the onus for the belated filing of the request on to the Department whereas they have not even been diligent to file the request at or about the time when the threshold of six months was being crossed.

13. Government places reliance upon the judgment of the Hon'ble Bombay High Court in the case of Cadila Healthcare Ltd. vs. Union of India[2015(320)ELT 287(Bom)]. Para 3 & 4 of the judgment are reproduced below.

> *"3. We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.*

4. In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise, Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed."

14. The exporter in the above case before the Hon'ble Bombay High Court was similarly placed. Although the exporter had applied for extension which was pending at the time of export, the exporter was unable to produce permission for grant of extension. In such circumstances, their Lordships had upheld the rejection of rebate claim by the Maritime Commissioner. This judgment of the Hon'ble High Court is squarely applicable to the facts of the case. As elucidated in the preceding paras, the clearances of impugned goods have been effected atleast eight months before from the factory of the manufacturer. The Government is of the view that the judgment of the Hon'ble Bombay High Court fortifies the view that the rebate claim has rightly been rejected by the lower authorities.

15. In addition to the judgment of the Hon'ble Bombay High Court, reliance is placed upon the decision of the Government of India in the case of Ramlaks Exports Pvt. Ltd.[2011(272)ELT 637(GOI)]. The relevant portion of the said Order is reproduced below.

"9. Government further observes that as per condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-04 "the 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."

10. As the applicant has failed to fulfill the condition by not getting the required permission from the jurisdictional Commissioner Central Excise for exporting the goods beyond a period of six months, so rebate claims cannot be sanctioned as this is a substantial/mandatory requirement. The case laws cited by applicant are not applicable in this

case as it is not a case of only procedure lapses. Since the Commissioner of Central Excise has not granted extension of six months time period for export of goods, the mandatory requirement of exported goods within 6 months from the date on which goods were cleared from factory of manufacture is not fulfilled."

16. In the facts of the case and the grounds of appeal before them, the case laws relied upon by the rebate sanctioning authority and the Commissioner(Appeals) are also apposite. Government finds that the applicant has failed to fulfill the condition by not obtaining the required permission from the Commissioner of Central Excise for exporting the goods beyond a period of six months and therefore the rebate claims cannot be sanctioned as this is a substantial/mandatory requirement. Government notes with displeasure that the applicant has stored non-duty paid goods for upto 15 months without bothering to seek permission under Rule 20 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT) dated 26.06.2001. The actions of the applicant bear out blatant disregard for the provisions of the statute, the rules and the notifications issued thereunder. The case laws cited by the applicant are not applicable as it is not a case of simple procedural lapse. Since the Commissioner of Central Excise has not granted extension of six months time period for export of goods, the mandatory requirement of exporting goods within 6 months from the date on which the goods were cleared from the factory of manufacture is not fulfilled.

17. It is also observed that the applicant has very brusquely disregarded the requirements of the notification issued under the auspices of the statute. The applicant has not obtained any permission to store non-duty paid goods from the manufacturers premises at their warehouse under Rule 20 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT) dated 26.06.2001. They have chosen to follow the procedure for self-sealing in respect of pharmaceutical products. Needless to say, there cannot be any laxity while exporting pharmaceutical products; more so in a case where they are being exported after being stored for a year. However, on a cursory examination of the ARE-1 enclosed with the revision application, it is observed that the procedure laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 6.09.2004 and para 6.1 of Chapter 8 of the

CBEC Manual has not been followed scrupulously. The said para stipulates that the owner, the working partner, the Managing Director or the Company Secretary is to certify all the copies of the application to the effect that the goods have been sealed in his presence. However, there is no such certification on the ARE-1's. In the case of goods procured by a merchant exporter, the manufacturer is required to countersign the ARE-1. The ARE-1s' in the present case have not been countersigned by the manufacturer of the impugned goods. As such, it appears that the applicant has treated the provisions and the procedures for claiming rebate on goods which have been exported with disdain.

18. In view of the above discussions and findings, Government observes that the rebate claim is not admissible to the applicant and the applicants appeal was rightly rejected by the Commissioner(Appeals).

19. The Revision application is dismissed.

19. So ordered.

30.11.18

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

ORDER No. 409/2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018.

To,

M/s. Amtec Health Care Pvt. Ltd.
5/502, Garden Estate,
Off. Pokhran Road No. 2,
Thane(W) 400 601

ATTESTED

10/12/18

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

Copy to:

1. The Commissioner of GST & CX, Thane Commissionerate.
2. The Commissioner of GST & CX, (Appeals), Raigad.
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