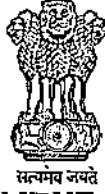


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Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/02/2015-RA

Date of Issue: 27/12/2018

ORDER NO. 428 /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.

Applicants : M/s Ions Pharma.

Respondent : Maritime Commissioner, Central Excise, Mumbai-1

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PD/85/M-1/2014 dated 28.08.2014 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I.



ORDER

This Revision Application has been filed by the M/s Ions Pharma (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PD/85/M-1/2014 dated 28.08.2014 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I wherein he rejected the appeal filed by Applicant.

2. The issue in brief is that the Applicant, Merchant Exporter had filed Rebate claims for Rs. 5,94,825/- under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate claims was filed in respect of excisable goods cleared from the factory of M/s Vibrant Pharmachem Pvt., Raichur, Karnataka under the cover of Central Excise Invoice and ARE-1 and subsequently exported from Air Cargo Complex, Sahar. The endorsement on Part-B of the relevant ARE-1 confirmed that the goods in question were exported. The details are as given below:

Sl. No.	ARE-1No & date	RC No & date	C.Ex. Invoice No. & date	Date of Shipment	Rebate amount claimed (Rs)
1	03/2013-14 dt 11.10.13	7417 dt 03.03.14	085/13-14 dt 11.10.13	28.10.2013	1,23,600
2	02/2013-14 dt. 09.10.2013	7418 dt 03.03.14	084/13-14 dt 09.10.13	21.10.2013	3,55,350
3	04/2013-14 dt. 11.10.2013	7419 dt 03.03.14	085/13-14 dt11.10.13	28.10.2013	1,15,875
				Total	5,94,825

The Applicant then filed the claim on 03.03.2014 and upon scrutiny of the said claim, it was found to be not proper as the ARE-1 was addressed to the Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan,



Khandeshwar 410 206. As the said rebate claims should had been filed at the address mentioned in the ARE-1, instead of Maritime Commissioner, Central Excise, Mumbai-1. Hence a Show Cause Notice dated 15.05.14 was issued to the Applicant. The Maritime Commissioner(Rebate), Central Excise, Mumbai-I vide Order-in-Original No. 70/MTC-R/2014-15 dated 20.05.2014 rejected the rebate claim as it was filed with the inappropriate authority under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. Aggrieved, they then filed appeal with Commissioner(Appeals-I), Central Excise, Mumbai Zone-I, who vide Order-in-Appeal No. PD/85/M-1/2014 dated 28.08.2014 rejected the appeal.

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

3.1 They had purchased excisable goods for export that were cleared from the factory of M/s. Vibrant Pharmachem Pvt., Raichur, Karnataka- under three Central Excise Invoices dated 09.10.2013 and 11.10.2013. The Corresponding three ARE-Is dated 09.10.2013 and 11.10.2013 were prepared for the same. Proper Central Excise duty was paid on all these three consignments by the M/s. Vibrant Pharmachem Pvt. Ltd. by debit in the RG23 Register under Entry No. 11, 12 and 13 all dated 31.10.2013 respectively.

3.2 In all the three ARE-1s, they had mentioned the particulars of Assistant/Deputy Commissioner of Central Excise/Maritime Commissioner of Central Excise from whom rebate shall be claimed/with whom bond/undertaking is executed and his complete postal address as "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206", since the goods were to be exported through JCH, Nhava Sheva Port.



- 3.3 They had received the purchase order from their overseas buyer to send the impugned goods through Sea Route initially. After buying the goods, due to urgency of their overseas buyer, they had exported the goods through Mumbai Air Cargo instead of Nhava Sheva Port through Sea. For the said reason they were not able to change the particulars of Assistant/Deputy Commissioner of Central Excise/Maritime Commissioner of Central Excise from whom rebate shall be claimed/with whom bond/undertaking is executed and his complete postal address as the present one. They had submitted the letter signed by their manufacturer showing correct address Dharavi, Mumbai.
- 3.4 The learned Deputy Commissioner/Maritime Commissioner (Rebate) did not appreciate these facts that and erred in rejecting the refund claims without appreciating the above facts and other facts stated in their submissions and is required to be set aside on this ground alone.
- 3.5 There is non Appreciation of law and the procedure prescribed in CBEC Manual and Notification No 19/2004 as amended. Rebate/refund are governed by Section 118 of the Central Excise Act, 1944 and Rule 18 of the Central Excise Rules, 2002. Chapter 8 of CBEC's Excise Manual of Supplementary Instructions, 2005 also stipulates and prescribes the documents to be submitted by the Applicant while filing rebate claim. Thus the Rebate claim can be sanctioned by either the Deputy/Assistant Commissioner of Central Excise of Central Excise having jurisdiction over the factory of Production of export goods or warehouse or, as the case may be, Maritime Commissioner.
- 3.6 In the present case they in all the three ARE-1s had indicated at the time of removal of export goods the office and address with which they intend to file claim of rebate as "Maritime Commissioner, Raigad" due to the reason that the goods were



exported through Sea as per the purchase order placed by the buyer. Due to urgency shown by our buyer, they had no other alternate but to export the goods after clearances from the factory of supplier , through Mumbai Air Cargo Complex.

- 3.7 As per the "Presentation of claim for rebate to Central Excise" specified in (b) of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 claim of the rebate of duty paid on all excisable goods can be lodged with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner. In the present case the Appellants had the option to file the claim in any of these two places and since, the goods were exported through Air Cargo Complex, the jurisdictional Maritime Commissioner, was Maritime Commissioner, Central Excise, Mumbai-1 and hence they had accordingly filed the rebate claim as per the law.
- 3.8 They had also submitted a letter from the manufacturer about the correct name and address of the Respondent for claiming the Rebate claims and the Maritime Commissioner of Central Excise, Mumbai-I should have sanctioned the rebate claim in whole but the Deputy Commissioner/Maritime Commissioner (Rebate) in the impugned order failed to appreciate any of these aspects in real sense and erred in rejecting the Rebate claims. Hence the impugned order passed by the Deputy Commissioner/Maritime Commissioner (Rebate) is required to be set aside on this ground alone as the same is ab initio void.
- 3.9 These goods were exported by them from Air Cargo Complex, Sahar, which left for foreign destination on the date on 21.10.2013, 28.10.2013 and 28.10.2013 respectively. The endorsement on Part-B of the relevant ARE-I confirm that the goods in question were exported on the dates mentioned therein



i.e. on 21.10.2013, 28.10.2013 and 28.10.2013 respectively. In Para (b) of the findings, the Respondent himself admitted that:

"In the instant case, the rebate claims was filed by the exporter in respect of the Central Excise duty paid on clearance of goods exported vide AR-1 as detailed in the subject. Scrutiny of the documents revealed that the duty has been paid on the goods exported which can be established from the triplicate copy of ARE I duty certified by the jurisdictional Range Officer".

The above observation confirms two facts. The goods cleared under three impugned ARE-1 were exported by the Appellants and Central Excise Duty on these goods have been paid by the manufacturer. The rebate claims were filed within the time period stipulated under the law and the same is an admitted facts.

3.10 It is well settled law that the Department cannot retain the duty paid on the goods exported for any reasons and is duty bound to refund it to the Applicant. In this they relied on the Government's Order in the case of Commissioner of Central Excise, Bhopal [2006 (205) ELT 1093 G.O.I].

3.11 The only dispute is with whom the Refund application has to be filed. Initially the goods were intended to be exported by Sea through JCH, Nhava Sheva Port. Therefore, the Name and Address of the authority in ARE-1 was shown as "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206". Since, due to urgency the goods were exported through Air Cargo Complex, Mumbai. In this case the Maritime Commissioner is the Respondent and not "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206". The officers at the office of "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206", had refused to accept their application stating that as the goods were neither exported through



the Port falling under their jurisdiction nor the factory is situated under their jurisdiction. Hence, as the goods were exported through Air Cargo Complex, Mumbai, the Maritime Commissioner is the Respondent and they had correctly filed the application with the Respondent.

3.12 The Ld. Deputy Commissioner/Maritime Commissioner (Rebate) in his impugned order failed to consider all these aspects and erroneously in a mechanical manner rejected the Rebate/Refund claims. If, according to the Ld. Deputy Commissioner/Maritime Commissioner (Rebate), then only option left to him was to return the claim with the remark and they would have taken that letter and pointed out to the officials of Raigad Commissionerate and forced them to accept it which, they did not earlier. Else, the Ld. Deputy Commissioner/Maritime Commissioner (Rebate) should have forwarded our application directly to the concerned authorities according to him. Hence, the impugned order is required to be set aside.

3.13 It is not under dispute that:

- (i) they had procured the duty paid goods for export from M/s. Vibrant Pharmachem Pvt. Ltd;
- (ii) These goods were cleared from the factory of M/s, Vibrant Pharmachem Pvt. Ltd., Raichur, Karnataka- 584134;
- (iii) These goods were cleared under the cover of three Central Excise Invoices viz: 84/2013-14 dated 09.10.2013; 85/2013-14 dated 11.10.2013 and 86/2013-14 dated 11.10.2013;
- (iv) They had prepared corresponding three ARE-I being ARE-1 No. 02/2013-14 dated 09.10.2013, 03/2013-14 dated 11.10.2013 and 04/2013-14 dated 11.10.2013 for the same;
- (v) Proper Central Excise duty were paid on all these three consignments by the said M/s. Vibrant Pharmachem Pvt.



Ltd. by debit in the RG23 Register under entry No. 11, 12 and 13 all dated 31.10.2013 respectively.;

- (vi) These goods were exported by the Appellants on 21.10.2013; 28.10.2013 and 28.10.2013 respectively;
- (vii) Duty payment particulars have been endorsed by the Range Superintendent on the copy of ARE-1;
- (viii) Export particulars have been endorsed by the Jurisdictional Custom officer as proof of Shipment;
- (ix) The claim for Rebate/Refund were filed within the time limit.

3.14 The Ld. Deputy Commissioner/Maritime Commissioner (Rebate) in his impugned order failed to consider all these aspects and erroneously in a mechanical manner rejected the Rebate/Refund claims unlawfully. The same is required to be set aside.

3.15 The Order of the Ld. Deputy Commissioner/Maritime Commissioner (Rebate) is far from the truth and does not take into consideration catena of Judgments in the matter of CESTAT, High Courts and Supreme Court and the Law in the matter.

3.16 They prayed that to set aside the Impugned Order-in-Appeal Central Excise Mumbai-1 and to Sanction/Grant Refund of Rs. 5,94,825/-.

4. A personal hearing in the case was held which was attended by Shri Vijaykumar Shahasane, Advocate on behalf of the Applicant and Shri V.N. Sankhe, Assistant Commissioner, CGST, Div-I, Navi Mumbai Commissionerat on behalf of the Respondent. The Applicant reiterated the submission filed through Revision Application and pleaded the Revision Application may be allowed and Order-in-Appeal be set aside. The Respondent reiterated the order of Commissioner(Appeals) and pleaded that the instant Order-in-Appeal be upheld and Revision Application be dismissed.



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 the Applicant, Merchant Exporter had received the purchase order from their overseas buyer to send the impugned through sea route /JCH, Nhava Sheva Port. Hence had they had purchased excisable goods for export from M/s. Vibrant Pharmachem Pvt. Ltd, Raichur, Karnataka, manufacturer and cleared the impugned goods from the factory under three Central Excise Invoices and corresponding three ARE-1s. Central Excise duty was paid on all these three consignments by the M/s. Vibrant Pharmachem Pvt. Ltd. by debit in the RG23 Register. Since the goods were to be exported through JCH, Nhava Sheva Port, in all the three ARE-1s, they had mentioned the particulars of Assistant/Deputy Commissioner of Central Excise/Maritime Commissioner of Central Excise from whom rebate shall be claimed/with whom bond/undertaking is executed and his complete postal address as "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206". After buying the goods, due to urgency of their overseas buyer, they had exported the goods through Mumbai Air Cargo. Then, M/s. Vibrant Pharmachem Pvt. Ltd, vide 3 letters all dated 24.10.2013 addressed to the Maritime Commissioner of Central Excise, O/O Commissioner of Central Excise, Dharavi, Mumbai informed about the address correction in respect of the 3 ARE-1s as "Maritime Commissioner of Central Excise, O/O Commissioner of Central Excise, 2nd floor, MSEB Bldg, Estrella Battery Compund, Dharavi, Mumbai-400 019. The Applicant then filed refund claim with the Maritime Commissioner, Central Excise, Mumbai-I.

7. Government observes that the original adjudicating authority in his findings at Para 3(b) -



(b) "In the instant case, the rebate claims was filed by the exporter in respect of the Central Excise duty paid on clearance of goods exported vide AR-1 as detailed in the subject. Scrutiny of the documents revealed that the duty has been paid on the goods exported which can be established from the triplicate copy of ARE I duly certified by the jurisdictional Range Officer. Although the duty has been paid, the said claim was addressed to the The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206 , where the claim should had been filed".

8. Governement observes that CBEC Circular No. 770/3/2004-CX dated 09.01.2004

"Subject : - Jurisdiction of Maritime Commissioners - regarding.

I am directed to say that doubts have been expressed regarding the jurisdiction of Maritime Commissioners regarding filing of rebate claims and execution of bonds consequent to issue of notifications No. 79/2003-CE (NT) and No. 80/2003-CE (NT) both dated 29.10.2003, amending the notifications No. 40/2001-CE (NT) and No. 42/2001-CE (NT) both dated 26.6.2001.

2. The matter has been examined by the Board. It may be seen that as per para 4 of Notification No. 40/2001-CE (NT) dated 26.06.2001, claim of rebate of duty was to be lodged with the Assistant /Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse, as the case may be, or the Maritime Commissioner. This position continues to remain the same after the aforesaid amendments. However earlier, Explanation-III of the said notification defined Maritime Commissioner as Commissioner of Central Excise under whose jurisdiction the port, airport, land customs station or post office of exportation is located in respect of certain specified places only, but after issue of Notification No.79/2003-CE (NT) dated 29.10.2003, each Commissioner of Central Excise under whose jurisdiction the port, airport, land customs station or post office of exportation is located has been designated as Maritime Commissioner. Thus, the jurisdiction of the Maritime Commissioner is in relation to the port, airport, land customs station or post office under the jurisdiction of the said Commissioner of Central Excise from which the export has actually



place. It is evident that the jurisdiction of the Maritime Commissioner is directly related and restricted to the port of exportation of the export goods under consideration. This position was clearly explained in Circular No.758/74/2003-CX dated 29.10.2003.

3. *Similarly, for exports under bond*

4. *It may be noted that amendment to notification No.40/2001-CE (NT) and No.42/2001-CE (NT) both dated 26.6.2001 have resulted in increase in number of Maritime Commissioners but the basic concept of jurisdiction of Maritime Commissioner continues to be related to the jurisdiction of the Commissioner of Central Excise under whose jurisdiction the port/ airport/ land customs station or post office of exportation is located. "*

9. Government notes that Para 8 of Chapter of C.B.E.& C Excise Manual of Supplementary instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. Government notes that in the instant case, the manufacturer have mentioned in the 3 ARE-1s as "The Commissioner of Central Excise, Raigad, Kendriya Utpad Shulk Bhavan, Khandeshwar-410206" but the export had taken place through Air Cargo, Mumbai. In such case, Maritime Commissioner, Central Excise, Raigad, who exercises jurisdiction over exports made through JNCH, Nheva Sheva will have no jurisdiction. Hence the Applicant has correctly filed the rebate claim with Maritime Commissioner, Central Excise, Mumbai-I

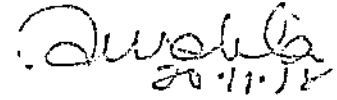
10. Government feels that grounds taken by the lower authorities in rejection of the rebate claim is purely of technical nature. Government notes that this procedural lapse is condonable as mentioning of wrong rebate sanctioning authority cannot be availed ground for denying the substantial benefit of rebate.



of duty paid on exported goods. Further, in this case, the export of duty paid goods is not in dispute. Hence Government holds that the rebate claims cannot be rejected on the point of jurisdiction and hence the rebate claim is admissible.

11. In view of the above, Government sets aside the impugned Order-in-Appeal No. PD/85/M-1/2014 dated 28.08.2014 passed by the Commissioner(Appeals-I), Central Excise, Mumbai Zone-I and Order-in-Original No. 70/MTC-R/2014-15 dated 20.05.2014 and allows the instant Revision Application filed by the Applicant.

12. So, ordered.



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

ORDER No. 498 /2018-CX (WZ)/ASRA/Mumbai DATED 30.11.2018.

To,
M/s Ions Pharma
106/107, A-Wing,
Kanara Business Centre,
Near Lakshmi Nagar,
Ghatkopar (East),
Mumbai 400 075.

Copy to:

1. The Commissioner(Appeals-I), Central Excise, Mumbai-I .
2. The Maritime Commissioner(Rebate), Central Excise, Mumbai-I.
3. The Deputy / Assistant Commissioner(Rebate), GST & CX Mumbai Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

