

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. 195/227/12-RA / 3662

Date of Issue: 31.07.2020

ORDER NO. 464/ 2020-CX (WZ) / ASRA /Mumbai DATED 20.04.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Glow Pharma Pvt. Ltd., Mumbai

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No. BC/293/RGD/2011-12 dated 31.01.2012 passed
by the Commissioner of Central Excise (Appeals),
Mumbai Zone-II.



ORDER

This revision application is filed by M/s. Glow Pharma Pvt. Ltd. Mumbai (hereinafter referred to as 'the applicant') against the Order-in-Appeal No. BC/293/RGD/2011-12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II

2. Brief facts of the case are that the applicant had filed 29 rebate claims amounting to Rs.8,28,025/- (Rupees Eight Lakh Twenty Eight Thousand Twenty Five only) with the Deputy Commissioner (Rebate), Central Excise, Raigad. During the scrutiny of the claims, it was observed that the clearance of export goods has not taken place directly from premises of concerned manufacture unit to the port as required under para 2(a) of the Notification No. 19/2004-C.E.(N-T) dated 06.09.2004 read with para 1.1 of the Part-I of the Chapter-8 of Supplementary instructions of CBEC's Central Excise Manual. It was also observed that Chapter sub-heading of goods are different in ARE-1/invoices and shipping bills. In all the cases, it thus appeared that the said goods removed under ARE- I had not been presented to Customs for export. The FOB value in the shipping bills was lower than the assessable value declared in the corresponding ARE-1s. From the records, it was also seen that the applicant had debited the amounts on the basis of export invoice value which appears to include freight and insurance. Such inclusion was inadmissible. It further appeared that the international freight and insurance had been deliberately included in the assessable value in order to get higher amount of rebates. The applicant had been issued Central Excise Registration No. AAACG3678FXDO01 for operating as Dealer of Excisable goods by the jurisdictional Assistant Commissioner, Central Excise, Kalyan-1 Division, Thane-I Commissionerate. The Registration address of their Godown as per the said Certificate was Jai Matadi Compound, Godown No. R-2, Thane Bhivandi Road, Kalher Village, Bhivandi, Dist-Thane-421302. However, on perusal of the Excise invoice submitted along with the claims, it was found that few such invoices indicate the address as 14-E, Jai Matadi Compound instead registered Godown address as mentioned above. It was also found that few Excise invoices had been raised indicating the address of their office at



Andheri, Mumbai whereas other invoices had been raised indicating the address at Bhivandi as Godown No. 14-E or R-2 as mentioned above.

3. The Deputy Commissioner (Rebate), Raigad Commissionerate vide Order-in-Original No. R-1456/ 2010/ DC/ (Rebate)Raigad dated 23.12.2010 rejected the said rebate claims as the delivery of export goods could not be said to have taken place directly from the premises of the concerned manufacturing unit to the place /port of export viz. JNPT/Nhava Sheva as required under the provision of Notification No. 19/2004 dated 06.09.2014 read with para 1.1 of the Part-1 of the Chapter-8 of Supplementary instructions of CBEC's Central Excise Manual and the excisable goods were not exported after payment of duty directly form a factory as required under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended.

4. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals), who vide Order-in-Appeal No. BC/293/RGD/11-12 dated 31.01.2012 upheld the Order-in- Original No, R-1456/2010/DC/(Rebate) Raigad dated 23.1.12.2010 and rejected the appeal filed by the applicant.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the following grounds:

5.1 The Appellate Authority factually erred in observing that supporting documents such as Excise invoice along with each ARE-1 is not submitted while claiming rebate. In the said order, the Appellate Authority has observed that the applicant has not specified any evidence regarding their raising of excise invoices at different addresses. When the excise invoices were very much on record then it is incorrect and improper to offer finding that excise invoice was not submitted with each ARE-1. The finding offered by the Appellate Authority are contradictory in nature and on this sole ground, impugned order deserves to be set aside.

5.2 As long as fact of export of goods and duty paid character of the goods is not in dispute, rebate claim cannot be denied. One of the essential aspect is identity of the goods cleared from factory and actual export should be established. In the impugned proceedings, detailed chart duly supported by documents i.e. ARE-1, packing list, Shipping Bill, Bill of lading and Bank Realisation Certificate was submitted before the Appellate Authority for substantiating their say of actual export of goods by them but instead of scrutinizing and



examining the said documents, the learned Appellate Authority has observed that applicant has failed to submit supporting document.

- 5.3 It is a Government Policy that export should not suffer any duty and once the substantial requirement of export out of country of the goods is proved then substantive benefit of rebate cannot be denied for procedural infractions. It is relevant to note that Rule 18 of the Central Excise Rules, 2002 creates substantive right while procedure has been laid down by Notification no.19/2004. The duty paid nature of goods is proved by document i.e. ARE-1 was duly endorsed by the Custom Officers and certificate of Central Excise Range Superintendent certifying the duty paid nature of exported goods. Also for co-relating with export, Shipping Bill, Bill of lading, Mate Receipt, Packing list were produced. The procedure prescribed for merchant exporter can be relaxed when goods are exported from a place other than factory of manufacture of warehouse as held in the matter of SANKET INDUSTRIES LTD. reported in 2011(268) ELT 125 (GOI).
- 5.4 Even though goods are not exported directly from the factory but when fact of export is not in dispute, it has been consistently held that rebate claim is admissible. In the impugned proceedings, it is true that goods were not directly exported from factory of the manufacturer but based on the documents placed on record, it would be abundantly clear that goods are exported. They are merchant exporter and even though central excise invoice is raised from three places, it is undisputed fact that all the three places are belong to them. They re-iterate that once goods are exported by the merchant exporter, even though not directly from the factory, such exports are permissible as held by the Government in the matter of GUJARAT TRADING CO by placing reliance on para 6 of the CBEC Circular No. 294/10-97-CX., dated 30-1-1997.
- 5.5 The description of the goods exported was matching with co-related document i.e. ARE-1, invoice, Shipping Bill, Packing List, Mate Receipt etc. Merely non-matching of chapter heading etc., would not be a criteria for rejection of rebate claim when fact of export of goods is not in dispute.
- 5.6 As per settled law procedural lapses under Central Excise Rules are condonable if goods are exported. In the impugned proceedings, fact of export is not in dispute only objection was said goods are not exported directly from the factory of the manufacturer. For substantiating their say that procedural lapses are condonable, when goods are exported, they would like to place reliance on the decision as follows:



T.I. CYCLES OF INDIA - 1993 (66) ELT 497 (T)
KRISHNA FILAMENTS LTD. — 2001(131) ELT 726(GOI) MODERN
PROCESS PRINTERS — 2006 (204) ELT 632(GOI) BIRLA VXL LTD. -
1998(99) ELT 387 (T)
NON-FERROUS MATERIALS TECH. GEV. CENTRE — 1994(71) ELT
1081 (GOI).

6. Personal hearing in this case was scheduled on 04.10.2019, 05.11.2019 and 20.11.2019 and 25.02.2020. However the applicant neither appeared for the personal hearing on the appointed dates, nor made any correspondence seeking adjournment of hearings. Hence, Government proceeds to decide these cases on merits on the basis of available records.

7. 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.

8. On perusal of case records, Government observes that department has held the instant rebate claims inadmissible as the goods were not exported directly from factory or warehouse as laid down in condition 2(a) of Notification No.19/2004-CE(NT) dated 6.09.04 and the relaxed procedure laid down in CBEC Circular No. 294/10/97-Cx dated 30.01.97 relaxing the above said condition is not applicable to the said goods as the same are not easily identifiable.

9. The main ground for rejection of rebate is that goods are not exported directly from factory of manufacture as required under Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Under such circumstances, it is imperative to examine whether CBEC's Circular No. 294/10/97-Cx dated 30.1.97 has been complied with or not. C.B.E. & C. vide Circular No. 294/10/97-CX, dated 30-1-1997 has relaxed the condition of direct export of goods from factory of manufacturer subject to the condition that procedure prescribed in the said circular is followed. As per said circular, the exporter desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from factory; stored outside the place of manufacture should make an application to the Superintendent of Central Excise in-charge of Range under whose jurisdiction such goods are stored. On



receipt of such application the particulars of goods lying stored should be verified with particulars given in application and ARE-1 form. If the Central Excise Officer deputed for verification of goods for export is satisfied about the identity of goods, its duty paid character and all other particulars given by exporter, he will endorse such form and permit export. The detailed procedure is given in Para 8.1 to 8.6 of said circular.

10. On perusal of sample records, Government finds that the applicant obtained the permission from custom authorities regarding stuffing of goods in containers for further stuffing under central excise supervision; that the central excise authorities examined the goods at applicant's warehouse, where the goods were brought from factory and subsequently cleared for export. The central excise officers examined the goods at applicant's godown and accordingly, examination report given. The examination of such documents reveals correlation in as much as the examination report at applicant's warehouse contain ARE-1 No.; that Part-B of ARE-1 contains Shipping Bill No. and vice-a-versa; that container number mentioned in excise examination report also found in impugned Shipping Bill. As such, it can be said that there is substantial compliance of said Board Circular No. 294/10/97-Cx dated 30.1.97 dated 30.1.1997.

11. The original authority in Order in Original dated 23.12.2010 has observed that the Registration address of their Godown as per the Central Excise Registration Certificate issued to the applicant was Jai Matadi Compound, Godown No. R-2, Thane Bhivandi Road, Kalher Village, Bhivandi, Dist-Thane-421302, however, on perusal of the Excise invoices submitted along with the claims, it was found that few such invoices indicate the address as 14-E, Jai Matadi Compound instead registered Godown address as mentioned above and that it was also found that few Excise invoices had been raised indicating the address of their office at Andheri, Mumbai whereas other invoices had been raised indicating the address at Bhivandi as Godown No. 14-E or R-2 as mentioned above.

Against this, the applicant has contended that they have cleared the goods from their registered warehouse where the goods were stored; that the clearances have been made in the supervision of the Central Excise officer i.e.



Inspector and Superintendent of Central Excise, Range-II, Kalyan, Division-I, Thane-I Commissionerate; that the applicant has already enclosed the inspection report issued by the Inspector and Superintendent of Central Excise, Range-II, Kalyan, Division-I, Thane-I Commissionerate towards each consignment of export with the Revision Application, under which it is clearly mentioned as under:

"verified empty container before stuffing. Verified Particulars as per Invoice and packing, Checked Marks & Nos. of the Cartons. Examined 10% After selection, checked description, quantity Gross Weight, Net Weight, value of the export product as mentioned in the Invoice and Packing List."

The applicant has also contended that in the token of the verification, the aforesaid officers have also certified/endorsed Part-A of the relevant ARE-Is prepared by them which is also certified by the authorized representative of the relevant Manufacturers. However, the certified copy of the relevant ARE-Is by both the officer of Central Excise, has also been verified/certified by the Customs officer and in token of their satisfaction, the Customs Officer has endorsed Part - B of ARE-1, which do not leave any doubt about the identity of the goods cleared from the factory of manufacture and exported are same.

12. Moreover, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse and sufficient corroborative evidence found to correlate exported goods with goods cleared under Excise documents. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd.

13. Neither the original authority nor the appellate authority disputed the fact of export of goods. Cursory glance at the documents appended to Revision Application reveal that material facts relevant to the export such as description, quantity, weight etc. are tallying with the relevant documents ARE-1s and Shipping Bills. The AREs-1 duly certified by Central



Excise Officers and Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-I Form. Moreover, Government finds that there are sufficient evidences on record in favour of applicant's contention that their each consignment of export was examined before removal for export. However, the original authority is also required to carry out verification regarding endorsement of Superintendent and Inspector of jurisdictional Central Excise to effect that the goods were actually physically examined by the said officers while removing the goods for export.

14. Government also notes that there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgements, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty paid goods, rebate claims have to be held admissible. In view of above position, Government holds that rebate claims are not deniable to the applicant on the grounds that the goods could not be exported directly from factory or warehouse in terms of Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

15. As regards difference in Chapter sub-heading of goods appearing in ARE-1/invoices and shipping bills, the applicant has contended that it is a typographical error while filing the shipping bill and the Chapter Sub Heading mentioned on Central Excise invoices is correct. Government in this regard relies on GOI Order No. 547/2012-CX., dated 9-5-2012 in Re: Aventis Pharma Ltd. [2012 (285) E.L.T. 151 (G.O.I.)] wherein while allowing the rebate GOI observed that except from stated difference in nomenclature and classification as per respective tariffs there is neither any charge nor any evidence to suggest that goods exported were other than the goods actually cleared from factory of manufacture; that a number of connected documents i.e.

commercial invoice, Bill of Lading and BRC etc. contains both the nomenclature which establishes the item as one and the same. Therefore, it is



incumbent upon the respondent department to verify the documents furnished by the applicant so as to satisfy that goods exported were not the one cleared from the factory.

16. As regards rejection of rebate claims on account of less FOB value mentioned on relevant Shipping Bills than the assessable value on which duty has been debited by the manufacturers, Government is of the considered opinion that by keeping Section 4(1)(a) and 4(3)(c)(i) to (iii) in the back ground and by observing Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the correct "place of removal" which would be as per the actual transactions" made so as to complete the impugned export 'sale' has to be determined. Each place of removal/point of sale would be subject to terms/conditions of contract between exporter and overseas buyer which would in turn decide the proper assessable value for the purpose of the leviability of duty. Government notes that value of exported goods should confirm to 'transaction value' as envisaged in the Section 4 of the Central Excise Act 1944 and the exporter would be entitled to rebate of only that much amount of duty payable on assessable value determined under Section 4 of Central Excise Act, 1944. In catena of its judgements, GOI while discussing provision of Section (4) of the said Act *ibid*, has held that where place of removal is port of export; the transaction value should be FOB value. Therefore, Government is of the considered view that it is not justifiable to deny the entire amount of duty claimed as rebate on account of difference in assessable value shown on excise invoice and shipping bill etc. and the admissible amount of rebate is required to be calculated / sanctioned by the adjudicating authority taking into account the transaction value/FOB value as determined under Section 4 of the Central Excise Act, 1944, as discussed *supra*.

17. In view of above circumstances, Government is of opinion that the rebate claims of the applicant exporter herein are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.2004 if the goods exported are identified with the goods cleared from factory of manufacture on payment of duty subject to detailed verification

by original adjudicating authority of the documents pertaining to impugned

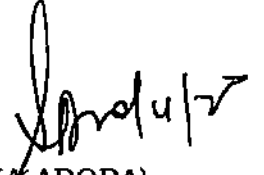


exports and verification of duty payment particulars on triplicate copies of relevant ARE-I form by the jurisdictional Central Excise Range officer.

18. In view of discussion and findings elaborated above Government sets aside the Order-in-Appeal No. BC/293/RGD/2011-12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and remands the case back to original authority to decide the case afresh taking into account the above observations. The applicant is directed to submit all the documents before original authority for verification. The original authority will pass orders, after giving due opportunity of personal hearing also to the applicant in accordance with law, as expeditiously as possible.

19. The revision application is disposed of in the above terms.

20. So, ordered.



(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 464/2020-CX (WZ) /ASRA/Mumbai, DATED 20 04 2020

To,

M/s. Glow Pharma Pvt. Ltd.,
Flat No. 217/218, 2nd Floor,
Hubtown Viva, Opp I. Y. College,
Off western Express Highway,
Jogeshwari (East), Mumbai-400 060.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to :-

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file,
Spare Copy.

