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**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F NO. 195/1706/12-RA

3653

Date of Issue:

3/02/2020

ORDER NO. 468 /2020-CX (WZ) /ASRA/MUMBAI DATED 20.04.2020 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Apurva Biopharma Inc., Thane, Maharashtra.

Respondent : Commissioner, CGST, Belapur Commissionerate.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/550/RGD/2012 dated 07.09.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



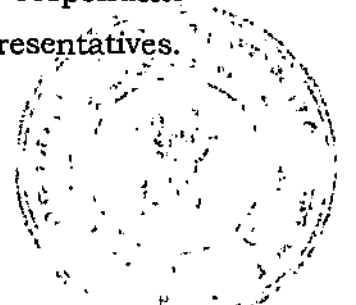
**ORDER**

This revision application has been filed by M/s Apurva Biopharma Inc, F-16, Niharika Shopping Plaza, Opposite Lokpuram Temple, Pokhran Road No. 2, Thane (West)- 400 610 (Maharashtra) (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/550/RGD/2012 dated 07.09.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The case in brief is that the applicant had filed 7 (Seven) rebate claims for the amount of Rs. 1,11,827/- (Rupees One Lakh Eleven Thousand Eight Hundred Twenty Seven) for the goods exported by them under different ARE-1s, The Deputy Commissioner, Central Excise (Rebate), Raigad sanctioned all the rebate claims filed by the applicant vide order-in-original No. 1813/11-12/DC (Rebate)/Raigad dated 10.01.2012. However, the Deputy Commissioner (Rebate), Central Excise, Raigad filed an appeal against said Order in Original before Commissioner (Appeals) on the ground that the rebate claims to the tune of Rs. 1,11,827/- were wrongly sanctioned as the applicant had not followed the procedure of self sealing as required under para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004. The appellate authority set aside the order in original vide impugned Order in Appeal for non compliance of the basic conditions of 'self sealing procedure' mentioned under Notification no. 19/2004-CE(NT) dated 06.09.2004 and para 6.1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions thereof.

3. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944.

4. A personal hearing was held in this case on 12.12.2017, 08.02.2018, 12/13.12.2018 and 21.11.2019. Neither the applicant nor respondent attended any of the personal hearing in person or through representatives.



The Government therefore take up the case for decision on the basis of the documents available on records.

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. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned in para supra.

6. Government observes that the Appellate authority i.e. Commissioner (Appeals) has upheld the findings for rejecting the rebate on the following ground :

- (i) The provision of self sealing/self certificate is mandatory provision and the applicant has not followed the procedure as laid down in para 3(a) (ix) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and also the guidelines issued under para 6.1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions.

7. Government observes that Government of India vide Order No. 10/2016-CX dated 15.01.2016 in case of M/s Universal Impex, Mumbai while upholding the order of the Commissioner (Appeals) and rejecting the Revision Application filed by the assessee on similar grounds observed that

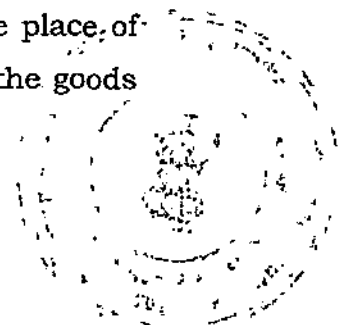
- *as per Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid, the manufacturer exporter registered under Central Excise Rules, 2002 and merchant exporter who procure and export goods directly from the factory or warehouse can exercise an option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self sealing.*
- *where the exporter desires self sealing and self certification for removal of goods from the factory the owner, working partner or Managing Director among others of the manufacturing unit shall certify on all copies of ARE-1 that the goods have been sealed in his presence and shall distribute the various copies as prescribed including to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of removal of goods.*



- from a plain reading of the above provisions it is clear that if goods are cleared from a factory for export under claim for rebate it has to be under the cover of an ARE-1 duly certified for purpose of identity of goods either by the Superintendent/Inspector or the person from the factory as the case may be. This duly verified/certified ARE-1 is then certified by the Customs after due verification/examination that goods have been exported and the verification on ARE-1 prior to clearance from factory and thereafter by the Customs at the time of export helps to establish that the goods which were cleared from the factory are the same which are exported and without having followed the procedure as described in the Notification it cannot be established that goods which were cleared from factory were the ones actually exported or goods exported cannot be correlated with goods cleared from factory.
- that the nature of above requirement is both a statutory condition and mandatory in substance which also finds support in various judgments of the Apex Court and also noted that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani-(AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd - 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

8. In view of the foregoing, Government observes that the impugned goods which were cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under self-sealing and self-certification procedure and

therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods

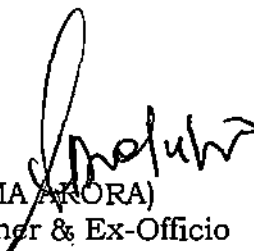


cleared from the factory and those exported cannot be said to have been established. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004-CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. The rebate claims are therefore inadmissible.

9. In view of above, Government does not find any infirmity in the impugned orders of the Appellate Authority and hence upholds the same.

10. Revision Application is disposed off in the above terms.

11. So, ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No 468/2020-CX (WZ) /ASRA/Mumbai DATED 20.04.2020

To,  
M/s Apurva Biopharma Inc,  
F-16, Niharika Shopping Plaza,  
Opposite Lokpuram Temple,  
Pokhran Road No. 2,  
Thane (West)- 400 610 (Maharashtra)

**ATTESTED**

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

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate 1<sup>st</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
2. The Commissioner, Central Excise, (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
3. The Deputy / Assistant Commissioner(Rebate), 1<sup>st</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

