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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. 195/508/12-RA /3631

Date of Issue: 31.07.2020

ORDER NO. 469 /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. Okasa Pharma Pvt. Ltd., Satara, 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/83/RGD/2012 dated 10.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



**ORDER**

This Revision Application is filed by M/s Okasa Pharma Pvt. Ltd. (hereinafter referred to as the Applicant) against the Order-in-Appeal No. US/83/RGD/2012 dated 10.02.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone — I with respect to the Order-in-Original passed by the Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant is merchant exporter. The applicant procured "Ciprofloxacin Tablet" by paying Central Excise duty under excise invoice no. 56 dated 16.05.2006 & 216 dated 10.08.2006 issued under Rule 11 of Central Excise Rules, 2002 along with ARE-1 issued under Rule 18 of CER, 2002. The applicant said to have followed the procedure as laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004. The applicant filed rebate claims for Rs. 3,45,633/- (Rupees Three Lakh Forty Five Thousand Six Hundred Thirty Three Only). The said rebate claims were rejected by the Rebate Sanctioning Authority vide Order in Original No. 541/11-12/AC(Rebate)/Raigad dated 30.06.2011 for following deficiencies noticed while processing the same.

2.1 The declaration at the footnote of the ARE-1 is incomplete. Hence it cannot be ascertained whether the benefit under specified Notifications have been availed or otherwise. (Footnote at Sr. No. 3 (a), (b) and (c) of ARE-1).

2.2 The claimant failed to comply the said deficiency even after pointing out the same to them.

2.3 The applicant failed to submit duty payment certificate.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before Commissioner (Appeals-II), Central Excise, Mumbai. The appellate authority upheld the order in original vide Order in Appeal No. US/83/RGD/2012 dated 10.02.2012.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4. For the ease of reference the declaration given on the body of ARE-1 at Sr.3 (a), (b) & (c) is reproduced herein below :-





Therefore, all these aforesaid documents had been on record of rebate sanctioning authority. Further availability of duplicate ARE-1 and Triplicate ARE-I at the record of rebate sanctioning authority were not in dispute. Therefore as per the provisions of Notification 19/2004 C.E.( NT) dated 06/09/2004 receipt of duly endorsed Triplicate ARE-I from jurisdictional central excise office having jurisdiction over manufacturing unit at rebate sanctioning authority itself justified that the goods were duty paid goods. Therefore further submission or requirement of duty payment certificate is prior precaution taken by rebate sanctioning authority to avoid wrong sanctioning of rebate in favour of revenue is acceptable but we shall not be held responsible for the same.

5. Personal Hearing scheduled in this case on 04.10.2019, 05.11.2019, and 20.11.2019 and 10.08,2015. However, neither applicant nor respondent attended the same. The Government notes that Shri Prashant Mhatre, Authorised Representative of the applicant attended the personal hearing on 10.08.2015 conducted by the then Joint Secretary (RA), New Delhi. The records show that Shri Prashant Mhatre reiterated the written submissions and requested to take lenient view in the matter. In view of the above, the case is taken up for hearing on the basis of the documents available on records.

6. 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.

7. The limited issue involved in the instant case is that the applicant's rebate claims were rejected on the ground that the declaration made at Sr. No. 3 (a), (b) and (c) of ARE-1 was incomplete and that duty payment certificate was not received from the Jurisdictional Central Excise Authority.

8. In this regard Government observes that the Notification No.19/2004. CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, has laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that these are procedural requirements. Such procedural infractions can be condoned. Further, it is now a settled law while sanctioning the rebate claim, that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been



prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer, payment of duty and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. It is further observed that rebate/drawback etc. are export-oriented schemes and undue restriction and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.

9. In *Suksha International v. UOI* - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the *Union of India v. A.V. Narasimhalu* - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

10. In catena of judgments, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant. Government also places its reliance on GOI in Revision Order No. 32/2016 - CX Dated 04.02.2016 in the case of *M/s Mahavir Synthesis Pvt. Ltd. Vs Commissioner of Central Excise, Raigad*, wherein while allowing application of the applicant the Revisionary authority observed that *the rebate claims cannot be rejected for procedural lapses of wrong ticking of declaration in Para 3 (a) (b) & (c), 4 of ARE-1.*

11. Government finds that identical issue of ticking wrong declaration in case of *M/s. Socomed Pharma Ltd.* decided by GOI in Revision Order No. 154-157/2014-CX dated 21.04.2014 (reported in 2014 (314) ELT 949 (GOI) wherein it has been observed that mere ticking of wrong declaration may not be a reason for rejection of rebate claim especially when substantial condition of export of duty paid goods established.

12. In view of discussions and findings elaborated above, Government holds that said rebate claims are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE( NT) dated 06.09.04 subject to verification by original adjudicating authority of the details given in the photocopies of the said documents, pertaining to impugned exports with the original case records and



verification of duty payment particulars on triplicate copies of relevant ARE-1 forms by the jurisdictional Central Excise Range officer.

13. In view of the above, Government set aside the impugned Order-in-appeal and remand the matter back to the original authority to decide the impugned rebate claims afresh in view of above observations, after due verifications of documents submitted by the applicant after affording reasonable opportunity for hearing and to pass well-reasoned order within eight weeks from the receipt of this order.

14. Revision application is disposed off accordingly on above terms.

15. So ordered.

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

ORDER No 469/2020-CX (WZ) /ASRA/Mumbai DATED 20.04.2020

To,  
M/s Okasa Pharma Pvt. Ltd.,  
L-2, Additional MIDC Area,  
Satara - 415 004.

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.

**ATTESTED**

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

