

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, Cuff Parade,
Mumbai- 400 005

F.No. 195/458/12-RA/2315

Date of Issue: 29.08.2020

ORDER NO. 471/2020/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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. One World Pharma Pvt. Ltd., Mumbai.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/135 & 136/RGD/2012 dated 28.02.2012 passed by the Commissioner (Appeals-II) Central Excise, Mumbai.



ORDER

This Revision Applications has been filed by M/s. One World Pharma Pvt. Ltd., Mumbai. (hereinafter referred to as 'applicant') against the Order-in-Appeal No. US/135 & 136/RGD/2012 dated 28.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The brief facts of the case are that the applicant, a Merchant exporter had filed rebate claims with Maritime Commissioner (Rebate), Raigad. The Maritime Commissioner vide Orders in Original No. (i) 2238/10-11AC (Rebate) / Raigad and (ii) 2239/10-11AC (Rebate)/Raigad both dated 31.03.2011 rejected rebate claims of Rs.22,441/-(Rupees Twenty Two Thousand Four Hundred Forty One only) and Rs.9,28,742/- (Rupees Nine Lakh Twenty Eight Thousand Seven Hundred Forty Two only) for non-compliance of conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, issued under Rule 18 of the Central Excise Rules, 2002 read with supplementary Instruction issued by CBEC, namely (i) Goods not exported directly from the factory and (ii) non receipt of duty payment confirmation and Shipping Bill verification.

3. Being aggrieved by the decision of the office of the Maritime Commissioner (Rebate) Raigad, applicant preferred appeal against both the aforesaid orders in original before Commissioner (Appeals) Mumbai Zone-II.

4. Commissioner (Appeals-II) Central Excise, Mumbai vide Order in Appeal No US/135 & 136 /RGD /2012 dated 28.02.2012 upheld Orders in Original passed by the Maritime Commissioner (Rebate Section) Raigad rejecting the rebate claims and rejected the appeals filed by the applicant.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application on the grounds mentioned in Revision Application.

6. Personal hearing in this case was scheduled on 10.08.2015 before the then Revisionary Authority, New Delhi. which was attended by Shri Prashant Mhatre on behalf of the applicant. After the transfer of case records from Revision Application Unit, New Delhi to Revision Application Unit, Mumbai the applicant was once again



offered opportunity to appear for the personal hearing on 04.10.2019, 05.11.2019 and 20.11.2019 on account of change of revisionary authority. However, the applicant did not appear for the personal hearing on the appointed dates. Further, there was no correspondence from them seeking adjournment of hearing. Hence, Government proceeds to decide these cases on merits on the basis of available records.

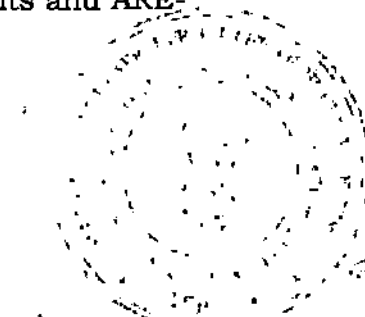
7. In its written submission filed during the personal hearing held on 10.08.2015, the applicant submitted as under:-

7.1 Goods not exported directly from the factory

In this matter it is clarified that, export orders received from overseas customers are usually for multiple products of different dosage forms which are being manufactured by us at different units across the country. There is no full container load at any of the factory units, hence the export consignments are cleared from each factory by self-sealing of shippers and transported in trucks/ tempos. To comply with any one export order, they are dependent on various units and goods can be shipped against such export orders only when we receive all goods specified under the order from all concerned units.

They, therefore, need to consolidate at one place, the export cargo cleared from various factory units before it could be sent further to the port for shipment against particular order. Thus goods cleared from factory for export are stored temporarily at their private godowns located at Bhiwandi for consolidation and further dispatch to ports. They use such en route godowns solely for the purpose of storage and goods are cleared from there to the port of export in original factory packing conditions. They maintain proper accounts and documents for goods stored at such godowns which are also duly insured. In terms of provisions of Drugs and Cosmetics Act, 1945 and Rules made there under, They also obtain required storage licenses at such godown premises.

From depot, cargo is moved in tempo /trucks to the port of export along with ARE ls copies, excise invoices prepared by factories and depot challans. To establish identity, verification of cargo with documents by the Customs authorities as per guidelines laid down in this regard and goods are stuffed in containers under supervision of Customs. If goods are found in order, shipment documents and ARE-



1s are signed by the Customs. Sealed containers are thereafter handed over to port authorities / liners upon "let export" orders by Customs.

- 7.2 Further, the condition of the Notification has been misconceived to mean that the goods cleared from factory for export should be directly transported to the port and en route storage of goods would vitiate the said condition. In fact, the Notification only required that "the excisable goods should be exported after payment of duty, directly from a factory or warehouse", which has in fact been duly complied by them. The Notification did not, even remotely, suggest that the goods cleared for export from factory/warehouse should be transported directly to the port. In fact, the very second clause in the para 2 of the Notification allowed time period up to six months, from the date of clearance of goods from the factory, till its actual exportation. Therefore, reading both these conditions simultaneously, the harmonious construction would only mean that the:

"Thus the rebate sanctioning authority has relied on literal meaning of condition 2(a) of notification 19/2004 CE (NT), dated 6-9-2004 instead of the intention of legislature, or otherwise there is no relevance of condition 2(b) of said notification in any sense in consideration of 2(a)." as legislature have been not clarified where goods to be store in six month from day the removal of goods from factory of manufacturer to till the date of actual export. This practical difficulty have to consider by authority when they are acting as quasi-judiciary, in fact it is more responsibility/privilege of quasi judiciary authority by process find out the intention/will of legislature before deciding the matter.

Goods should have been cleared for export directly from factory/warehouse i.e. no rebate shall be allowed where goods initially cleared for home consumption are diverted subsequently for export, except otherwise permitted by general of special order by the Board. In fact, the Board has issued a general order relaxing the condition of direct export from factory in case of those goods where identity of goods could be establish with the help of some identification nos./marks to the duty paying character of the goods at the time of its original removal from factory.

Also, the matter is already decided by Revisionary Authority in favour of M/s. Cipla Ltd vide G.O.1 Order no. 12-30/2012-Cx dated 12.01.2012.

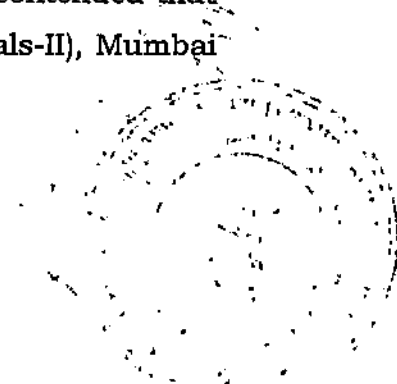


8. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Orders-in-Original and Order-in-Appeal.

9. Government observes that in the instant cases the applicant as a Merchant exporter was procuring the goods to be exported from different manufacturers and the goods were cleared by the manufacturers under self removal procedure. However, the goods cleared from the factory of manufacturers were not exported directly but cleared to the godown of the applicant at Bhiwandi and stored there. Subsequently, the goods were stuffed in containers and exported from there. In the instant case the rebate claims filed by the applicant were rejected mainly on grounds that the mandatory condition of 'direct export' as prescribed by Notification No. 19/2004 - CE (NT) dated 06.09.2004 is not complied with.

10. Government also observes that show cause notices were issued to the applicant, proposing to reject the rebate claims on the ground that the goods were cleared for export under ARE-1s and instead of being sent directly to the Port of Export had been dispatched to the godown in Bhiwandi. In their reply to the show cause notices, the applicant had submitted that goods cleared by the manufacturers for export market and the address which appeared on the concerned Central Excise invoice is the place where goods delivered prior to the schedule of actual export.

11. In their Revision Application the applicant has contended that the matter in issue has already been decided in favour of M/s Cipla Ltd. by the Commissioner of Central Excise (Appeals-II), Mumbai vide Order in Appeal No. YDB/ 263 to 281/ RGD/ 2011 dated 25.03.2011 wherein it was held that en-route storage of goods, cleared for exports from factory under the cover of ARE-1s, would not vitiate the condition at Sr. No. 2(a) of the said Notification and Revision Application preferred by the Department against the said Order-in-Appeal dated 25.03.2011 has also been set aside by the Reversionary Authority (Joint Secretary, Dept of Revenue, Ministry of Finance) vide its Order No. 12-30/2012-Cx dated 12.01.2012 with directions to sanction said rebate claim. The applicant has further contended that however, in similar matter Commissioner of Central Excise (Appeals-II), Mumbai

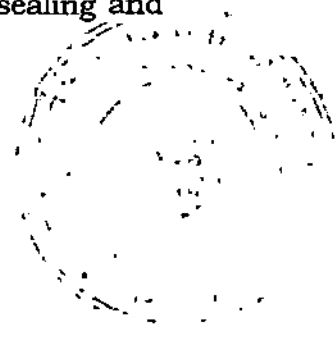


have not followed the judicial discipline and overruled the decision of given by Revision Authority while rejecting their appeal vide Order In Appeal No No. US/135 & 136/RGD/2011.

12. Government observes that in the instant case the applicant is a Merchant Exporter and procured the goods to be exported from different manufacturers. In all the above cases, the goods were cleared by the manufacturers under self removal procedure to the godown of at Bhiwandi. From the Order in Appeal No. YDB/263 to 281/RGD/2011 dated 25.03.2011 relied upon by the applicant, Government notes that the applicant therein had contended before Commissioner (Appeals) that

“they are having a number of supporting manufacturers. Export consignments are cleared from each factory under cover of separate ARE-1 on payment of duty. As individual consignments are not full container load, they are brought to their warehouse for consolidation of the cargo and stuffing in the containers under supervision of Central Excise Officers. They have obtained permission of the Customs for the same and a no objection certificate from the jurisdictional Deputy Commissioner of Central Excise”.

13. It is clear from the said findings that the applicant therein had sought the permission of the Assistant Commissioner of Customs, Export Department (Dronagiri) who granted permission for stuffing of the goods under the supervision of the jurisdictional Central Excise Officers vide Examination order F. No. S/6-FSP 493104 EXP(D) dated 20.7.2004, The Assistant Commissioner, Central Excise, Kalyan-I Division in whose jurisdiction the Bhiwandi godown was situated had already given N.O.C. for this. The goods were stuffed in containers under the supervision of jurisdictional officers of Central Excise who were satisfied about the identity of goods vis-à-vis respective ARE-I s. Government further observes that none of the consignments covered in the instant case was stuffed in the containers under supervision of Central Excise Officers. From the impugned Orders in Appeal, Government observes that the rebate claims were rejected on the ground that the condition of direct export has not been complied with by the applicant. The applicant had confirmed that they were clearing the goods under self sealing and

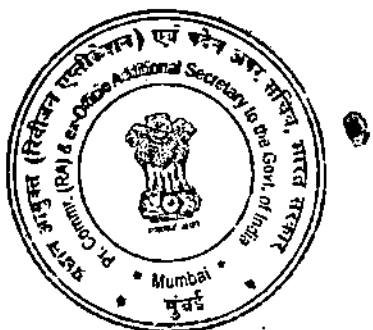


certification procedure to their godown at Bhiwandi and the applicant has not produced any evidence confirming that they were otherwise permitted by the Central Board of Excise and Customs by a general or special order for exporting goods from their godown situated at Bhiwandi. Further, it is not on record that the fact of not exporting the goods directly from the factory had been brought to the knowledge of the Jurisdictional Assistant Commissioner by the applicant. Thus reliance placed by the applicant on Order in Appeal No. YDB/263 to 281/RGD/2011 dated 25.03.2011/ GOI Order No. 12-30/2012-Cx dated 12.01.2012 and other case laws in the Revision Application is misplaced and therefore, not helpful to the applicant.

14. In a similar issue in the case of M/s L'amar Exports Pvt. Ltd. where the goods were not exported directly from factory/warehouse in violation of condition 2(a) of Notification No. 19/2004-C.E. (N.T.) but were cleared to its godown, in which goods from various manufacturers were received and from there the goods were cleared for export after consolidating the consignment as per export orders. While upholding the Order in Appeal rejecting the rebate claims, Revisionary Authority in its Order No.1258-1260/2013-CX dated 16.09.2013 [2014(311)ELT 941(GOI)] observed as under :

"8.3 The said procedure is not followed by the applicant though in written reply filed by ACCE (Rebate), Raigad, they had claimed to have followed the said procedure. The Jurisdictional Central Excise authorities were not informed about the said export and the goods were cleared for export from godown without supervision / examination by Central Excise Officers, who had to verify the identity of goods and their duty paid character. In such a situation, it cannot be proved that the duty paid goods cleared from factory have actually been exported".


15. In the present case Government observes that the applicant did not follow the proper procedure under Notification 19/2004-CE dated 06.09.2004 in as much as the goods were not cleared directly from factory for export but sent to Godown at Bhiwandi. Further, the Jurisdictional Central Excise authorities were not informed about the said export and the goods were cleared for export from godown without supervision / examination by Central Excise Officers.



16. In view of above discussions, Government finds no infirmity in Order-in-Appeal No. US/135 & 136/RGD/2012 dated 28.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and upholds the same.

17. The Revision Application is dismissed being devoid of merits.


18. So ordered.


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

ORDER No. 471 /2020-CX (WZ) /ASRA/Mumbai Dated 20-04-2020

To,

M/s One World Pharma Ltd.,
201/202/203, 2nd Floor,
Ark Industrial Estate, Makwana Rd.,
Marol, Andheri,
Mumbai - 400 059.

ATTESTED

B. LOKANATH
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,
6. Spare Copy.

