

REGISTERED
SPEED POST



F.No.195/496-497/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..15/3/16.....

ORDER NO. 48-49/2016-CX DATED 10.03.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

- Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Orders-in-Appeal No.876-877/RGD/2012 dated 11.12.12 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.
- Applicant : M/s Intas Pharmaceuticals Ltd., 2nd Floor, Chinuhai Centre, Off. Nehru Bridge, Ashram Road, Ahmedabad-380009.
- Respondents : Commissioner of Central Excise, Mumbai-II.

ORDER

These revision applications are filed by the applicant M/s Intas Pharmaceuticals Ltd., against Order-in-Appeal No.876-877/RGD/2012 dated 11.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Orders-in-Original No.639/11-12/DC(Rebate)/Raigad dated 30.05.2012 and 785/11-12/DC(Rebate), Raigad dated 04.06.2012 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of these cases are that the applicant's rebate claims were rejected vide the above two Orders-in-Original passed by the Deputy Commissioner (Rebate) Raigad rejecting rebate claims of Rs.236811/- and Rs.224840/- on the grounds that in one case the container number and seal numbers on various export documents were not tallying; in the other case the date of Mate Receipt was 05.02.2009 and as per the endorsement of the Custom Officer, the goods had been exported on 05.02.2009 itself whereas the corresponding ARE-1 was dated 28.02.2009 and the Shipping Bill was dated 26.02.2009. The rebate claim was also rejected for non-submission of BRCs. The original authority also held that rebate claims are admissible on FOB value on 4% duty payable under Notification No.4/2006-CE(NT) dated 01.03.2006 as against 10% under Notification No.2/2008-CE(NT) dated 01.03.2008 as claimed.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these Revision Applications under Section 35EE of Central Excise Act 1944 before Central Government on the following grounds:

4.1 Grounds of R.A.No.195/496/13-RA

4.1.1 On the issue of requirement of Bank Realisation Certificate, the Appellants stated that the Respondents themselves have clearly specified the list of documents to be submitted along with the rebate claim. This list is as per CBEC's instructions. Any other documents therefore are not required to establish the exports. However, as the Respondents have clearly specified his requirements for the BRC, it's the tendency of the exporters to submit the undertaking. Accordingly, the appellants have submitted the undertaking for submission, as based on such submission, number of the rebate claims of the Appellants have been passed. In the past based on such undertaking the Respondents have sanctioned number of rebate claims and this fact is known to respondents also. Still, as this is one of the requirement of the Respondents, the Appellants submit herewith the copy of Bank Realisation certificate for the goods exported vide Shipping Bill No. 4364618 dated 01.07.2011 thus one of the ground on which the rebate claim is thus squashed. This is for the

simple reason that the customer of the Appellants have received the goods and released the payment. Since the goods have reached the destination, the export is established

4.1.2 That the total number of cartoon & pallets mentioned in ARE-1 No.715 dated 30.06.2011 is also tallied with the number of cartons as shown in Shipping Bill No.4364618 dated 01.07.2012. Only the container No. shown in B/L is HLXU 8701879 with seal Nos.00195, which is not tallied with (i) container No. TRLU 1777965 seal No.545386 shown in Shipping Bill and (ii) container No. TRLU 1777965, seal No.817221 shown in Mate Receipt.

4.1.3 This action is worthwhile for the purpose of comparing the particulars of goods exported vide ARE-1 No.715 dated 30.06.2011 which are covered vide Excise Invoice No.711 dated 30.06.2011 with the similar other particulars with shipment documents to establish the exports.

4.1.4 Full and sufficient evidence on all other documents including BRC, to prove that goods covered vide ARE-1 No.960 dated 23.08.2010 are excise duty paid goods.

4.1.5 The applicants fully understand that the core aspect in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent export. Since the fundamental requirement is complied with, other attendant procedural requirements can be condoned and should not be the ground for the rejection of rebate claim.

4.1.6 In addition, the applicants rely on the following decision in support of their argument in the present appeal:

- CCE, Bhopal Vs. Sidhartha Soya Products Ltd as reported in 2006(205)ELT 1093 (GOI)
- Synthetics & Chemicals Ltd. Vs. Collector of Central Excise, Allahabad-1997 (93) ELT92(Tri)
- Mangalore Chemicals & Fertilizers Ltd. Vs Dy.Commissioner-1991(55) ELT437(SC)
- Barot Export as reported at 2006(203)ELT321(GOI)
- Modern Process Printers as reported at 2006(204)ELT632(GOI)

4.1.7 On the issue of non submission of Bank Realisation Certificate, the Appellants submit the certified copy of the same to establish that the goods exported vide Export Invoice No 4011101061 dated 29.06.2011, shipping Bill no. 4364618 dated 01.07.2011. Have reached the clients of the appellants have released the payment to the appellants. Thus the entire chapter of the goods exported is closed. On this ground itself, the appellants pray to condon the lapse for non submission of 1st page of ARE No. 960 dated 23.08.2010.

4.1.8 On the issue of Sanction of rebate claim in cash based on the FOB Value, the appellants request that as the duty was paid on CIF Value, the appellants pray that

the re-credit be given in cenvat credit accounts, as the Govt. cannot hold the duty in case where the duty paid is in excess of the FOB Value. Its cost to the exporter. On this issue, Your Honour have allowed the appeal vide Order No.US/370 to 379/Rgd/2011 dated 21.10.2011.

4.1.9 On the issue of duty paid under Notification 4/2006-CE & 212008-CE. the appellants submit as under:

In respect of Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, the Indian Parliament has floated two different Notifications, namely, (1) Notification 4/2006-C.E., dated 01.03.2006, with Serial Entry No. 62-C, where under, Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, are chargeable to total Central Excise Duty of 4.12% ad valorem and (2) Notification, 2/2008-C.E. dated 01.03.2008, with Serial Entry No. 21, where under, same Medicaments of the same Heading 3004 of the First Schedule to the said Tariff Act, are chargeable to total Central Excise Duty at the rate of 10.30% ad valorem. This means that at the disposal of the Appellants, they have two different Tariff Notifications, both being approved by the Indian Parliament, for the same Medicaments of the Heading, 3004 of the First Schedule to the said Tariff Act. By now it is settled question of Law that when the Learned Legislature has enacted two different Tariff Notifications, in respect of same finished excisable goods, it is upto the Central Excise Assessee, to choose one which is most beneficial to him for a given Consignment of the finished excisable good.

4.2 Grounds of R.A.No.195/497/13-RA

4.2.1 The same number of 46 packages weighing 8154.324 kgs are mentioned in export and excise documents. Unfortunately, both the copies of ARE-1 were endorsed with incorrect date of Mates Receipt as 05.02.2009 as the Mates Receipt No.154 dated 05.02.2009 was issued for Shipping Bill No.7122464 dated 26.02.2009. Since the date of Mates Receipt was 05.02.2009, the Respondents have informed the Appellants to submit BRC vide their Letter dated 26.04.2011 this was with the intention to establish that the goods are exported and collateral evidences are relied upon, as in the past, the respondents have accepted BRC in case of procedural lapse.

4.2.2 Since the claim was rejected only with the two minor defects, the applicants' have referred to the Shipping Bill and they have agreed to the mistake and fresh Mate Receipt No.154 dated 05.03.2009 was issued.

4.2.3 Since the payments of goods covered vide Shipping Bill No.7122464 dated 26.02.2009 was realized and the applicants submitted the Certified True copy of the Bank Realization Certificate. Thus with above submission that applicants have produced that there is complete identity and linkage to prove that the very same goods which are cleared under ARE-1 No. 942 dated 28.02.2009 have been exported out of India in complete compliance of all the applicable Rules and conditions.

4.2.4 In nut-shell, the Appellants state that the ARE-1 contains the names of their own name as manufacturer as well as exporter and the Central Excise Invoice No., Mark & No. of the packages of export goods. The export goods were mentioned on all other documents i.e. ARE-1s, Central Excise Invoice, Shipping Bill. The Marks/Nos., quantity and description is same on all the documents. The Customs has certified in Part B of ARE-1 that goods were exported under relevant Shipping Bill Nos. Similarly, the Custom Officers has mentioned the No./Date of ARE-1 in the Shipping Bill confirming that goods pertaining to ARE-1 are exported vide said Shipping Bill. Department has not disputed these facts. Thus in fact there is no dispute about the export of said goods, except incorrect endorsement on Original and Duplicate copy of ARE-1 about the date of mates Receipt and the Date of Mate Receipt. Therefore the Appellants are of the view that the proof of export cannot be rejected simply on the minor procedural lapses.

4.2.5 The appellants rely on the following decisions:

- UOI vs. Suksha International and Nutron Gems & Others, 1989 (39) E.L.T. 503 (SC)
- Mangalaore Chemicals and Fertilizers Ltd. Vs. DCCE, 1991 (55) ELT 437(SC)

5. Personal hearing was scheduled in this case on 13.03.2015 and 05.11.2015. Shri Hiren Soni, Asstt. Manager (W.H) and Shri Hemang Vaishnav, Asstt. Manager (IT) appeared for personal hearing on 13.03.2015 on behalf of applicant. None attended personal hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observes that the original authority has held that rebate is admissible only on duty payable @4% on FOB value as against @10%, as claimed by the applicant and that rebate claim is inadmissible on account of certain discrepancies. Commissioner (Appeals) upheld the impugned Orders-in-Original. Now, the applicant has filed these Revision Applications on ground mentioned in para (4) above.

8. In respect of revision application pertaining to Order-in-Original No.639/11-12/DC(Rebate)/Raigad dated 30.05.2012, Government observes that the main reason for rejection of rebate claims amongst others was that the container No. and Seal No. are not tallying attested copy of Bill of Lading was not furnished nor was the Bank Realisation Certificate. Also it was held that admissible rebate claim needs to be restricted to FOB value.

8.1 Government notes that the applicant failed to give any plausible explanation with regard to above said discrepancies in container No. and Seal No. Further, no amendments have been made for correction of Seal No. and Container No. in relevant documents. As such, in absence of any such specific explanation, other submissions

of the applicant fall flat to establish that goods cleared from factory have been actually exported.

8.2 As regards restricting the rebate to duty @5.15% and to duty paid on FOB value, Government finds that in catena of its judgments, it has been held that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% in terms of Notification No.4/06-CE dated 01.03.2006 as amended, as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944. Ratio of said judgments will be applicable to this case also.

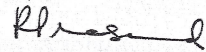
9. In respect of revision application pertaining to Order-in-Original No. 785/11-12/DC(Rebate), Raigad dated 04.06.2012, Government observes that the original authority rejected the rebate claim on the ground that Mate Receipt No.154 dated 05.02.2009 was issued prior with regard to relevant Shipping Bill No.7122464 dated 26.02.2009 which is not possible; that BRC was not submitted and it was held that in case rebate had not been rejected, it would be restricted to FOB value.

9.1 As regards the issue of date of Mates Receipt is concerned, the applicant contended that they have submitted fresh copy of the relevant Mate Receipt which shows the date as 05.02.3009, this aspect may be condoned. In this regard Government finds no merit in the plea of the applicant as nothing is placed on record to show that the fresh Mate's Receipt was produced before the concerned authorities and that suitable amendments were made in the relevant documents viz. ARE-1 etc. Therefore, it is rightly held by the lower authorities that goods could not have been exported prior to clearance from factory and rebate is liable for rejection on this ground alone.

10. In view of above discussion, Government holds that it is rightly held by the Commissioner (Appeals) that export itself cannot be assumed without proper evidence or contrary to evidence and therefore finds no infirmity in impugned Order-in-Appeal No.US/876&877/RGD/2012 dated 11.12.2012 and upholds the same.

11. The Revision Applications are thus rejected being devoid of merits.

12. So, ordered.




(**RIMJHIM PRASAD**)

Joint Secretary to the Government of India

M/s Intas Pharmaceutical Ltd.,
2nd Floor, Chinubhai Centre
Off. Nehru Bridge,
Ashram Road
Distt. Ahmedabad-382210

Attested

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(भास्वत शर्मा/Bhegwat Sharma)
ज्वालक - असुक्त/Assistant Commissioner
C.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राज्य वित्त)
Ministry of Finance (Dept. of Fin.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

ORDER NO. 48-49/2016-CX DATED 10.03.2016

Copy to:

1. The Commissioner of Central Excise & Customs, Mumbai Zone-II, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E), Mumbai-400051
2. The Commissioner of Central Excise (Appeals-II), Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E), Mumbai-400051
3. The Deputy Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Central Excise Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.

4. Guard File.

5. PA to JS (RA)

6. Spare Copy

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

