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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. 195/700/12-RA / 2866

Date of Issue: 10.8.2020

ORDER NO. 493 /2020-CX (WZ) /ASRA/MUMBAI DATED 08-06.2020  
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.

**Applicants** : M/s Adventus Laboratories (India) Pvt. Ltd.  
495/7 & 8, GIDC Estate, Makarpura,  
Vadodara - 390 010.

**Respondents** : Commissioner of Customs, Central Excise & Service Tax,  
Hyderabad- I.

**Subject** : Revision Application filed, under Section 35EE of Central  
Excise Act, 1944 against the Order-in-Appeal No.  
46/2012 (H-I) CE dated 27.03.2012 passed by the  
Commissioner(Appeals), Central Excise, Hyderabad.



**ORDER**

This revision applications is filed by M/s Adventus Laboratories (India) Pvt. Ltd., Vadodara against the Orders-in-Appeal No.46/2012(H-1)-CE dated 27.03.2012, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-1 &III), Hyderabad with respect to Order-in-Original No. 555/2011-12 (Rebate) dated 08.11.2011 passed by the Assistant Commissioner of Central Excise, & Service Tax, Hyderabad-B Division, Hyderabad-I Commissionerate.

2. Brief facts of the case are that the applicant are basically engaged in research and development work and also sometimes undertake export of excisable goods, in their status as merchant exporter. They had filed a rebate claim seeking refund of an amount of Rs. 15,33,161/-. On verification of the claim it was noticed that the Applicants procured 97 Kgs of "Moxifloxacin Hydro Chloride" From M/s Dr. Reddy's Laboratories Limited (CTO, Unit-II), Hyderabad for the purpose of export and exported the said material under their Invoice No. ADT/EX/001/10-11 dated 15.11.2010. It was found that the Applicants did not fulfil the conditions laid down under Clause 2(a) & 3(a) of the Notification No. 19/2004-CE (N.T) dated 06.09.2004 as amended as such the claim was returned back to the Applicants. Subsequent, Show Cause Notice was issued, which was adjudicated vide impugned Order-in Original where in the rebate claim of the applicant was rejected, for violation of clause 2(a) and 3(a) of the said Notification No.19/2004- C.E(N.T) dated 06.09.2004.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeals before Commissioner (Appeals), who rejected the same. The Appellate Authority while passing the order observed that :-

3.1 The condition at para (2)(a) and the procedure at para 3(a)(i) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 were stipulated to ensure that rebate is sanctioned only when the goods exported were the same as those which were cleared on payment of duty from a factory or warehouse.

3.2 As per the Board's Circular No. 294/10/97-CX dated 30.01.1997, certain goods which could clearly be identified are permitted to be exported from a place other than factory or warehouse for the purpose of rebate. However, the same is not applicable in respect of the bulk drugs exported in the instant case which are



not easily identified as there would not be any such indelible / engraved marks and /or numbers and hence the duty paid character cannot be verified beyond doubt.

3.3 It is settled issue that a Notification has to be treated as a part of the statute and it should be read along with the Act. Therefore, the conditions / procedure prescribed in the Notification No. 19/2004-CE (NT) dated 06.09.2004 has to be treated not only as statutory but also mandatory.

3.4 The condition as per Notification No. 19/2004-CE(NT) dated 06.09.2004 that the goods shall be exported after payment of duty directly from the factory or warehouse at para (2)(a) is not only mandatory but also statutory. Since the conditions are not complied with in the instant case, the applicant is not eligible for rebate.

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

4.1 Nowhere the excise Authorities have denied the factual position that the said excisable goods, were duty-paid goods, cleared by the Applicant, from the premises of the Manufacturer, namely, Dr.Reedy's Laboratories Ltd. which is falling under the jurisdiction of the excise authorities, with whom, the applicants have filed rebate claim of duty paid on the said excisable goods. Nowhere the excise authorities, have raised any apprehension about physical export of the said duty paid goods.

4.2 The documents, submitted clearly establish that whatever goods were cleared from the factory premises of the Manufacturer, falling within jurisdiction of the Original Authority, have been duly exported.

4.3 It is to be noted the Batch Nos., specified in the excise invoice of the manufacturer, along with, the kind of packages; description of goods; quantity, etc., all matched with the export documents.

4.4 Once the factum of export is confirmed, procedural violation of Clause (2)(a) and Clause (3)(a) of the Notification, 19/2004-C.E. (N.T.) dated 06.09.2004 or not following the procedure of ARE-1, cannot come on the way for grant of rebate of actually duty paid on the export goods.



4.5 Though it has been specified in the Show Cause Notice that the judgement, titled as Tablets India Ltd. Vs. GOI as reported in 2010-TIOL-652-HC-MAD-CX, relied upon by the Applicants in their letter, dated 09.06.2011 does not cover the current case of rebate of central excise duty. However, the observation does not have any legal support. Terms of the said judgement, are extremely clear and the judgement of the Honourable Madras High Court, is binding on the Original Authority and therefore, the rebate claim, in question, is to be allowed.

4.6 To support the proposal for rejection of rebate claim, in question, one of the grounds, canvassed by the excise authorities, to the effect that it is not possible to ascertain that the excisable goods, cleared from the Factory of M/s Dr. Reddy's Laboratories Ltd. on payment of central excise duty, are the same, which have been exported and for which, the rebate claim is being filed. This argument is not sustainable, under the fact and circumstances of the case. This is in as much as, the factual position is that the excisable goods, were cleared from the factory of M/s. Dr. Reddy's Laboratories Ltd., on payment of central excise duty, where the same, have been exported and in respect whereof, rebate claim, has been filed with respect to the central excise duty paid thereon. This is evident from the scrutiny of Packing List, attached to the export invoice and comparing the details of Packing list with the invoice, issued by M/s. Dr. Reddy's Laboratories Ltd. and it will be seen that Marks and Nos.; Batch Nos.; and kind of packages; description of goods; quantity, etc., matched in both the sets of documents. This means that the details, shown in the excise invoice of M/s. Dr. Reddy's Laboratories Ltd., are exactly the same, as mentioned in the Packing List, attached to the export invoice of the applicant. This establishes the factual position that one and the same excisable goods, which were cleared from the factory premises of M/s. Dr. Reddy's Laboratories Ltd., on payment of central excise duty, have been duly exported by the applicant, and this being the position, central excise duty paid on the impugned goods, is required to be refunded by the Department, with interest.

4.7 The applicant has relied upon various case laws in favour of their contention.

5. Personal hearing was scheduled in this case on 29.11.2017, 18.12.2017, 21.11.2019 and 27.11.2019. Nobody attended hearing on behalf of Applicants. The Applicant vide letter dated 25.11.2019 have requested to decide the matter based



on merits of the case. Further, the applicant informed that they do not require personal hearing in the matter.

6. Government has carefully gone through the relevant case records, oral / written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the original authority rejected the rebate claims of the applicants for the reason of non-compliance of the clause 2(a) and 3(a) (i) of the notification No. 19/2004-CE (N.T.) dated 06.09.2004 in as much as the applicant failed to export goods directly from warehouse except or otherwise permitted by the CBEC as general or special order. Commissioner (Appeals) upheld the impugned Order-in Original. Now the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the rebate claim of the applicant was rejected for the reason of non-compliance of clause of 2(a) and the procedure mentioned in para 3(i) of the Notification No. 19/2004-CE (N.T.) dated 06.09.2004. The condition 2(a) of the said notification No. 19/2004-C-E (N.T.) dated 06.09.2004 reads as under:-

**(2) Conditions and limitations : -**

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order

Further the procedure contained under 3(a)(i) reads as under:

**(3) Procedures:-**

**(a) Sealing of Goods and examination at the place of dispatch and export: -**

(i) The manufacturer exporters registered under the Central Excise Rules, 2002 and merchant-exporters who procure and export the goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing



8.1 From harmonious perusal of above said statutory provision, Government notes that the goods should be exported from a factory or warehouse except any general or specific relaxation given by the CBEC. The applicant procured the goods from the manufacture M/s. Dr. Reddy's Laboratories Limited, Hyderabad and stated to have bought the said goods at their godown at Vadodara and exported the same therefore. As such, it is fact that the goods were not exported from factory. The exporter nowhere claimed/proved that their premises at Vadodara is a registered 'warehouse. As such the goods were not exported from factory or warehouse as stipulated in para 2(a) of the said Notification No. 19/2004-C-E. (N.T.) dated 06.09.2004

8.2. Government notes that the requirement of export of duty paid goods directly from factory or warehouse can be relaxed by CBEC by a general or specific order. Government observes that the CBEC vide circular No. 294/10/97-CX dated 30.01.1997 provides for relaxation from condition of export directly from factory or warehouse. This circular allowed the relaxation subject to compliance of certain conditions. The conditions as stipulated in para (8) the said circular are as under:-

" 8. However, in case of future exports [including the export as shipstores], to avail the aforesaid waiver from the condition of direct exports from the factory/warehouse, the exporters will be required to follow the factory/ warehouse, the exporters will be required to follow the procedure prescribed in Circular No. 2/75 dated 22.1.75 [reiterated in Circular No. 18/92 dated 18.12.921 which is reiterated below with certain modifications:-

8.1 An exporter, (including a manufacturer-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 the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:-

- (a) Name of the exporter
- (b) Full description of excisable goods along with marks and /or numbers.
- (c) Name of the manufacturer of excisable goods.



- (d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared. (Photo copy of invoice/ duty paying document by submitted).
- (e) The rate of duty and the amount of duty paid on excisable goods.

8.2 The AR4 form should have a progressive number commencing with Sr. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/ consignments cleared from the same factory/ warehouse under different invoices or from the different factories/ warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

8.3 On receipt of the above application and particulars, the particulars of the packages/ goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.

8.4 If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.

8.5 The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.

8.6 The disposal of different copies of AR-4 forms should be in the following manner-

i) the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.

ii) triplicate and quadruplicate copies to be sent to the Superintendent Incharge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice/ duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt, and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate & quadruplicate copies of AR-4. He will also



endorse on the reverse of manufacturers" invoice "GOODS EXPORTED - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt.) He will forward the triplicate copy to the Maritime Commissioner of the port from where the goods were/ are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter, Range/ Division/ Commissionerate indicating name of the exporter" godown, warehouse etc. are located and where AR-4 is prepared, AR-4 No. and date, description of items, corresponding invoice No. of the manufacturer, remarks regarding verification, date of dispatch of triplicate& quadruplicate copy.

iii) the quintuplicate copy is to be retained by the Superintendent I/c of the range from where the goods have been exported for his record.

iv) the sixtuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than shipstores, should be exported within a period of six month from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period, (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise, after following the usual procedure.

8.9 The Chief Account Officer of the Maritime Commissioner or the Internal audit Department, as the case may be, should conduct cent-percent-post-audit of the documents by the making a reference to the Chief Accounts Officer of the Commissionerate from where the goods had been originally cleared on payment of duty as per existing procedure"

9. Government notes that the applicant has submitted the Export Invoices issued by them, shipping bills and airway bills in support of their claim. The applicant did not submit the invoices issued by M/s Dr. Reddy's Laboratories i.e. manufacturer with the claims. In the absence of the same the correlation of goods removed from factory and goods exported cannot be established. Also the jurisdictional range officer cannot verify the duty payment nature of the goods





exported or examine that the goods cleared from manufacture's factory were exported in original factory packed condition. The applicant did not remove goods under ARE-1 nor submitted the disclaimer certificate from the manufacturer along with the rebate claims. Thus the applicant has failed to comply with conditions of relaxation provided by the said circular No. 294/10/97-CX dated 30.01.1997.


In this regard, the Government observes that Hon'ble Chattishgarh High Court in W.A. No. 523 of 2018, decided on 25-7-2018 in case of M/s Trupti Steel Traders Vs. Assistant Commissioner Of C.Ex., Nagpur reported in 2019 (365) ELT 497 (Chattishgarh) observed as under:-

*“ Conjoint reading of Rule 18 and the relevant notification reveals that under the scheme of law, grant of rebate is subject to conditions or limitations, if any, and fulfillment of said procedure as may be specified in the notification. The notification then lays down the conditions as also the procedure. The conditions as stated in the notification is that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the first schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified in the notification. Therefore, the substantive part of the provision relating to entitlement to grant of rebate provides that rebate of all the duty to be paid to certain category of certain excisable goods would be available if they are exported, excluding two countries. The substantive law with regard to entitlement is therefore mandatory and no rebate would be available under the law unless goods are exported. Secondly, rebate would be available only on certain category of excisable goods and not on all. This part of the notification constitutes a mandatory requirement. The notification in clause 3 thereof, lays down the procedure for filing of rebate claims. It includes various documents which are required to be submitted along with rebate claims. We however, find that under Rule 18 grant of rebate is subject not only to conditions of rebate but also subject to fulfillment of procedure specified in the notification. It necessarily includes submission of various documents. On the face of Rule 18, which specifies pre-condition for grant of rebate, it should also be held to be mandatory. If the Rule itself requires the fulfillment of pre-condition for grant of rebate, it would amount to doing violence to the plain language of the statute to hold otherwise that fulfillment of requirements would not be a mandatory pre-condition. The purpose and object of requirement of submission of ARE-1 document is that the authority before whom claim of rebate is made, has authentic certified information relating to duty paid goods and its export in the form of certification of the excise officer as well as customs officer and in case of export by post, by certification of postmaster. This is intended to put in place an effective machinery of disposal of rebate claims. It is with the object of prompt decision of rebate claims and at the same time, to ensure that fabricated or forged claims are not allowed to percolate to avoid payment of duty ordinarily the procedure prescribed for seeking rebate must be followed which includes submission of various documents/certificates in prescribed forms including ARE-1 document. It is only in appropriate cases where it is found that for such reasons which are satisfactory in the opinion of the authority due to which the assessee for reasons beyond his control could not submit ARE-1 document that he could be allowed to lead collateral documentary evidence in support of its claim for rebate. However, this procedure would only be an exception to the general rule. If we hold that despite all pre-conditions in the law, assessee will*



*always have a choice either to submit ARE-1 document or to submit in collateral document for rebate, it would virtually render otiose the entire scheme and would in that process be doing violence to the requirement of law. Not only that, the process of evaluation and enquiry into verification of documentary evidence other than those required under the law may not only make the procedure of verification cumbersome but may also adversely affect efficiency of the working of the whole mechanism of decision on rebate applications. Where an assessee seeks to establish claim for rebate without ARE-1 document or for that matter without submission of those documents which are specified in relevant notifications he is required to clearly state as to what was that reason beyond his control due to which he could not obtain ARE-1 document. The assessee would be required to file at least affidavit of having lost the document required to be submitted to claim rebate. It will then be a matter of enquiry by the authorities as to whether the reason assigned by the assessee are acceptable to allow him to lead collateral documentary evidence in support of its claim of rebate. But we wish to make it clear that under no circumstances, it can be treated as parallel system as it is not established procedure under the law."*

10. In view of above discussions, the Government finds that rebate claims were rightly held inadmissible by the lower authorities. The Government finds no infirmity in the impugned Order-in-Appeal and hence, upholds the same.
11. Revision application is thus rejected being devoid of any merits.
12. So ordered.

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

ORDER No 493/2020-CX (WZ) /ASRA/Mumbai DATED 08-06-2020

To,  
M/s Adventus Laboratories (India) Pvt. Ltd.  
495/7 & 8, GIDC Estate, Makapura, Vadodara - 390 010.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, Vadodara-I Commissionerate, Central Excise Building, Race Course Circle, Vadodara-390 007 (Gujrat).
2. The Principal Commissioner, CGST, Hyderabad Commissionerate, GST Bhavan, opposite L.B.S. Stadium, Basheer Bagh, Hyderabad - 500 004
3. The Dy. Commissioner, CGST, Range -I, Division-V, CGST, Vadodara-I Commissionerate, Central Excise Building, Race Course Circle, Vadodara-390 007 (Gujrat).

Sr. P.S. to AS (RA), Mumbai

Guard file

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**ATTESTED**

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

