REGISTERED SPEED POST AD

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, Cuffe Parade,
Mumbai- 400 005

F. No. 195/1664-1666/12-RA / 3406	Date of Issue: 28.02.2020

ORDER NO. 508-510 /2020-CX (WZ) /ASRA/MUMBAI DATED 09/06/2020 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Intas Pharmaceuticals Ltd.
Plot No. 457 & 458,
Village Matoda,
Taluka Sanand,
District Ahmedabad,
Gujarat – 382 210

Respondent : Commissioner of Central Excise, Ahmedabad North

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. 256 to 258/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 30.10.2012 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

ORDER

These revision applications have been filed by M/s Intas Pharmaceuticals Ltd., Plot No. 457 & 458, Village Matoda, Taluka Sanand, District Ahmedabad, Gujarat – 382 210(hereinafter referred to as "the applicant") against OIA No. 256 to 258/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 30.10.2012 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

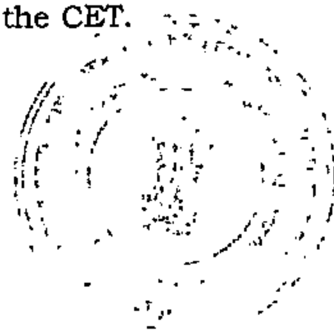
2. The applicant had filed three refund claims before the Assistant Commissioner in connection with the export of their goods under the provisions of Section 11B(2)(a) of the CEA, 1944 in respect of duty paid inputs used in the manufacture of non-excisable medicaments viz. PACLITAEXL Injection of different strengths exported under Bond which had been executed before the Prohibition & Excise Department of the State Government and under the supervision of the Prohibition & State Excise Authority in Form AR-4. The applicant had requested for refund of duty paid on the quantity of inputs consumed for production of export goods under Section 11B(2)(a) of the CEA, 1944. It was submitted that CENVAT credit was not admissible on the said inputs under the CCR, 2004. It was observed that Section 11B(2)(a) of the CEA, 1944 provides that if refund filed under Section 11B(1) is related to rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India, then the amount of refund would not be credited to the Consumer Welfare Fund but would instead be paid to the applicant. Section 11B(2)(a) does not provide for filing of any refund claim and therefore the refund claims filed by the applicant appeared to be unsustainable and liable for rejection. Accordingly show cause notices were issued to the applicant proposing rejection of the refund claims. The refund claims were subsequently rejected vide OIO No. MP/144/REF/2012 dated 10.02.2012, OIO No. MP/145/REF/2012 dated 10.02.2012 and OIO No. 133-135/Tr-Ref/2012 dated 27.02.2012.

3. Aggrieved, the applicant filed appeals before the Commissioner(Appeals). The Commissioner(Appeals) observed that the State Government is the competent authority to enforce the law in respect of medicaments containing alcohol whereas the rebate of duty paid on inputs is subject to the provisions of Section 11B of the CEA, 1944, Rule 18 of the CER, 2002 and Notification No. 21/2004-CE(NT) dated 06.09.2004. He further observed that the applicant had not followed the procedure laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004. With regard to the applicants contention that Section 11B does not bar the benefit of refund of duty paid on material used in the manufacture of goods which are exported out of India and that they do not differentiate between exported goods covered under the Central Excise Tariff and goods covered under the Medicinal and Toilet Preparation(Excise Duties) Act, 1955, the Commissioner(Appeals) found that the goods exported in the present case fall within the category of "excisable goods used in the manufacture of goods which are exported out of India" and that the provisions for grant of rebate of duty paid on inputs used in the manufacture of excisable goods cleared for export has been made in Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 and are subject to the observance of the procedure and conditions laid down in the said notification. He further observed that the condition no. 5 of the said notification stipulates that the goods are to be exported on the application in Form ARE-2 whereas the export in the present case has been carried out in Form ARE-4. Moreover, the condition no. 1 and condition no. 2 of the notification had also not been fulfilled. It was averred that finished goods contained alcohol and were not covered under CEA, 1944 read with CETA, 1985 in view of Chapter Note No. 5 of chapter 30 of the CET. The appeals filed by the applicant were rejected and the OIO was upheld by the Commissioner(Appeals) vide his OIA No. 256 to 258/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 30.10.2012.

4. The applicant was aggrieved by the OIA No. 256 to 258/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 30.10.2012 and has filed revision application on the following grounds:

(a) Government policy has been liberal towards exporters in grant of incentives and benefits to encourage exports. Notifications have been framed to provide the conditions and procedures for availing these benefits. At the same time Government Officers are to execute the rules and regulations framed by the Government to allow the benefits after considering the genuineness of the export in cases where the fact of export is not disputed by the Department. Procedural lapses which are committed by exporters are required to be condoned. The Commissioner(Appeals) has failed to take into account the above policy of the Government and denied the legitimate rights of the applicant.

(b) The applicant averred that the OIO had travelled beyond the scope of the SCN. It was contended that the SCN was issued on certain grounds whereas the reasons cited for rejection of the appeal by the Commissioner(Appeals) were entirely different. It was pointed out that the SCN was issued on the ground that the provisions of Section 11B(2)(a) does not provide for filing of refund claim and that the provisions of the CEA, 1944 does not allow refund/rebate of duty paid on inputs used in the manufacture of non-excisable goods exported. The SCN was based on the contention that the refund claims had been filed for refund of duty paid on goods used in non-excisable goods as they contained alcohol and were not covered under the ambit of the CEA, 1944, hence were not admissible and liable for rejection. However, the OIO records that the provisions for grant of rebate of duty paid on inputs used in the manufacture of excisable goods cleared for export has been made in Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 subject to the procedure and conditions laid down in the said notification. The adjudicating authority has then recorded that the prime condition for availing rebate of duty paid on inputs used in the export goods is that the finished goods cleared for export must be excisable. Since the export goods in the present case contained alcohol, they are therefore not excisable under the CEA, 1944 read with the CETA, 1985 in view of Note 5 to Chapter 30 of the CET.



The adjudicating authority has concluded on this basis that the benefit of Rule 18 of the CER, 2002 cannot be extended to such export clearances as finished goods are not excisable. Though the SCN did not contain this ground for rejection of refund claim, this new ground taken by the adjudicating authority for rejection and upheld by the Commissioner(Appeals) was not proper and legal in terms of the provision of Rule 5 of the Central Excise(Appeals) Rules, 2001.

(c) The applicant contended that the Commissioner(Appeals) had erred in holding that the provisions of the CEA, 1944 and the rules made thereunder are not applicable to these goods because the applicant had claimed rebate/refund of duty of excise paid on the quantity of inputs consumed in the goods exported which is admissible as per Section 11B of the CEA, 1944. Since the applicant has to follow the export procedure prescribed by the State Government as the finished goods fall within the purview of State Excise, the applicant is not required to follow Rule 18 of the CER, 2002 and the procedures laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004. However, the refund of duty paid on the quantity of raw material consumed in the final product which may be excisable goods or non-excisable goods is admissible in terms of Section 11B of the CEA, 1944 as per part V of Chapter 8 of the Central Excise Manual at Para 1.2 . The said para clarifies that in the said notification, the expression "Export Goods has been used" with reference to excisable goods "dutiable or exempted" as well as non-excisable goods.

(d) The applicant placed reliance on the following case laws:

(i) Medispan Ltd. vs. CCE, Chennai[2004(178)ELT 848(Tri-Chen)];

(ii) In Re : Drish Shoes Ltd.[2006(197)ELT 437(Commr.Appl.)];

(iii)Punjab Stainless Steel Inds vs. CCE, Delhi-I[2008(226)ELT 587(Tri-Del)];

(iv) CCE vs. Drish Shoes Ltd.[2010(254)ELT 417(HP)];

(v) CCE, Jaipur vs. Capital Impex (P) Ltd.[2010(261)ELT 844(Tri-Del)] &

(vi) Aurobindo Pharma Ltd. vs. CCE, Vishakhapatnam-I[2011(265)ELT 358(Tri-Bang)].

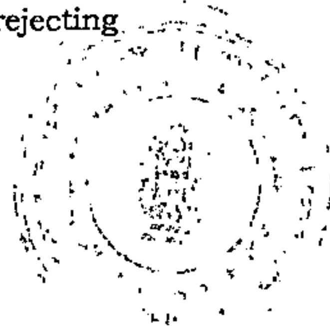
5. The Department filed submissions dated 01.12.2015 in response to the revision applications filed by the applicant. It was pointed out that the Revisionary Authority had decided a similar issue in respect of the same applicant vide Order No. 874/13-CX dated 09.07.2013 rejecting the revision application filed by the applicant. Being aggrieved by the said order, the applicant had filed SCA No. 4045/2014 before the Hon'ble High Court of Gujarat. The Hon'ble High Court while deciding the case made an observation at para 5.1 of the order dated 12.06.2014 that the rebate/refund claim had been denied on the ground that the petitioners had not followed the procedure prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004 whereas the SCN did not contain this ground for denial of refund. The Hon'ble High Court therefore held that the orders impugned in that case deserved to be quashed and set aside and remanded the matter back to the adjudicating authority to consider the same in accordance with law and on merits with liberty to issue fresh show cause notice. The Department thereafter issued fresh SCN alleging that the applicant had not observed the procedure and safeguards as laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004. The said SCN was adjudicated after giving opportunity of personal and the rebate/refund claim was rejected vide OIO No. 73/Ref/2014 dated 11.12.2014. Being aggrieved by the said order, the applicant had filed appeal before the Commissioner(Appeals) which was pending on the date when the Department had filed these submissions.

6. The applicant was granted opportunity of personal hearing on 27.11.2019. Ms. Anjali Hirawat, Advocate appeared on behalf of the applicant and submitted a compilation. She submitted that the matter was settled in their favour. She stated that the issue involved was the claim for rebate of duty paid on inputs used in non-excisable products having alcohol content which was under the control of State Excise. The said rebate claim was denied by the Department as well as the Revisionary Authority. However, after the Hon'ble High Court of Gujarat had remanded back the matter, the Commissioner(Appeals) had passed an order which was not challenged by the

Department. She submitted that the present case involved the same issue for a subsequent period.

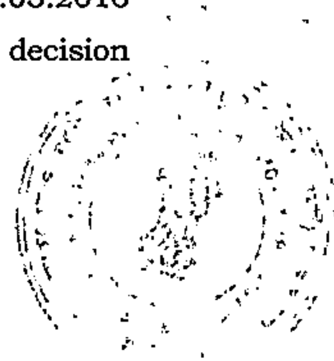
7. Government has carefully gone through the case records, the written submissions made by the applicant, their submissions at the time of personal hearing, the revision application filed by them, the impugned order and the order passed by the adjudicating authority. Government finds that the issue to be decided is whether refund of the duty paid on inputs used in the manufacture of non-excisable goods which were under the control of State Excise Authorities and the export of which was documented under Form AR-4 under supervision of State Excise. While effecting the export, no safeguards or provisions as laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004 were adhered to by the applicant. The thrust of the revision application filed by the applicant is that they are eligible for refund of excise duty contained in the inputs exported under Section 11B(2) of the CEA, 1944.

8.1 Government observes that the applicant had filed a similar refund claim for a previous period. In that case, the refund claim was rejected by the adjudicating authority, the appellate authority and the revisionary authority. It was found that rebate of duty paid on materials could be granted under Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under the said rule. However, the applicant had not followed the mandatory procedure prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004; a fact which the applicant had admitted to. Since they had not followed the procedure prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004, the refund claim was rejected. Aggrieved by the order of the revisionary authority, the applicant had filed Special Civil Application before the Hon'ble High Court of Gujarat. Their Lordships observed that the applicant had been put to notice for rejection of the refund claim filed by them on the ground that it had been filed by them under Section 11B(2)(a) of the CEA, 1944 and the said provision did not provide for grant of refund/rebate of duty paid on inputs used in the manufacture of non-excisable goods exported by them whereas while rejecting



the refund claim the Department had taken the additional ground that the applicant had not followed the procedure required as per Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. Therefore, since the adjudication of the refund claim had also been made on a ground to which the applicant had not been put to notice, the Hon'ble High Court of Gujarat remanded the case back to the original authority – the Assistant Commissioner to decide the refund claim afresh. While doing so, their Lordships also permitted the adjudicating authority issue fresh show cause notice contending the aforesaid ground.

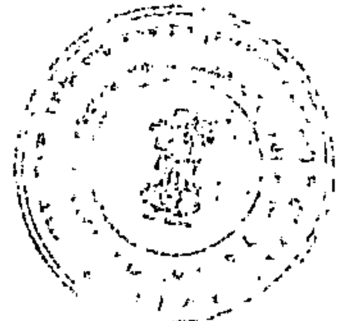
8.2 In the remand proceedings, the adjudicating authority issued show cause notice to the applicant for denial of the refund claim alleging that they had failed to observe the procedures and safeguards laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004. The refund claim was rejected vide OIO No. 73/REF/2014 dated 11.12.2014 passed by the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II. Being aggrieved the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that failure to adhere to the procedures and safeguards under Notification No. 21/2004-CE(NT) dated 06.09.2004 was a curable defect. He therefore vide OIA No. AHM-EXCUS-002-APP-059-15-16 dated 23/29.03.2016 set aside the order of the adjudicating authority and allowed the appeal with direction to the adjudicating authority to decide the matter within sixty days after proper verification of the relevant documents and input output ratio statement filed by the applicant. In the remand proceedings, the adjudicating authority found that the goods have been duly exported and the input output statement filed by the applicant had been verified by the Range Superintendent and were found to be as per the standard input-output norms fixed by the DGFT and had also been certified by a Chartered Engineer. The Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II therefore sanctioned the refund claim vide his OIO No. 48/REF/2016 dated 04.08.2016. The contention of the applicant at the time of personal hearing is based on the fact that the OIA dated 23/29.03.2016 having not been challenged by the Department, the ratio of the said decision



is now a binding precedent which the Department must adhere to. Consequently, the applicant has contended that the issue is now settled in their favour.

9. Before delving into the facts of the case, it must be understood that the fact that the Department had not challenged the OIA No. AHM-EXCUS-002-APP-059-15-16 dated 23/29.03.2016 passed by Commissioner(Appeals) would not make the order binding upon the Revisionary Authority. It is not as if this decision of the Commissioner(Appeals) has been approved by the Hon'ble High Court of Gujarat. Government therefore refrains from expressing any opinion about this order passed by the Commissioner(Appeals) and proceeds to examine the impugned order, to decide the revision applications on merits.

10. Government observes that the applicant has filed a refund claim for duty paid on inputs used in the manufactured product exported by them. The finished goods viz. Paclitaxel Injection containing alcohol has been exported. The said product is not exigible to central excise duty and comes under the jurisdiction of State Excise Authorities. The original as well as the appellate authority have rejected the refund claim on the ground that the applicant has not followed the procedure/conditions laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004. The plea of the applicant is that they are eligible for rebate of duty paid on inputs even if they have exported non-excisable. Their contention is that since the exported goods are falling within the purview of the State Excise, Rule 18 of the CER, 2002 and the procedure laid down under Notification No. 21/2004-CE(NT) dated 06.09.2004 is not required to be followed. The applicant has also argued that for exports under Rule 18, Rule 19 of the CER, 2002 or under the State Excise Rules or under the provisions of any other law for the time being in force or only under IEC Code No. or without IEC Code No. or any exporter whether registered with central excise or merchant exporter, he can claim the duty of excise paid on the quantity of inputs consumed in the exported goods as refund under the provisions of Section 11B of the CEA, 1944.



11.1 Government observes that the provisions of Section 11B(2)(a) of the CEA, 1944 which has been pressed by the applicant specifies the various situations in which refund due can be paid to the applicant instead of being credited into the Consumer Welfare Fund. One of the situations is refund of rebate of duty of excise paid on excisable goods exported out of India or where excisable materials have been used in the manufacture of goods which are exported out of India. This is the statutory provision which enables refund of rebate to an exporter. However, the scheme of Central Excise law empowers the Central Government to make rules for grant of rebate on goods which are exported out of India under Section 37(2)(xvi) and Section 37(2A) of the CEA, 1944. The said sections and the relevant clause is reproduced hereinafter for ease of reference.

"Section 37. Power of Central Government to make rules. – (1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may –"

"(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;"

"(2A) The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs."

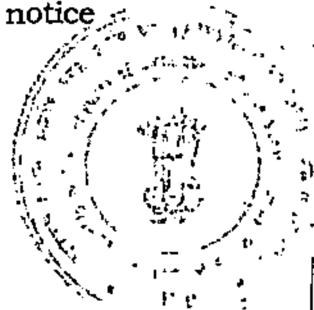
11.2 By this power drawn from Section 37 of the CEA, 1944, the grant of rebate is governed by the rule made by the Central Government for this specific purpose under the CER, 2002; viz. Rule 18 of the CER, 2002. Rule 18 reads thus.

"Rule 18. Rebate of Duty – Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such

goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

It is discernible from the text of Rule 18 that grant of rebate of duty paid on excisable goods and duty paid on materials used in the manufacture of export goods shall be subject to the conditions and limitations and the fulfilment of the procedure specified in the notification. In the present case, the notification issued for grant of rebate of duty paid on materials used in the manufacture of export goods is Notification No. 21/2004-CE(NT) dated 06.09.2004. Government observes that the applicant has stressed upon Section 11B(2)(a) of the CEA, 1944 as if it were a self-contained provision for obtaining refund of duty paid on materials used in export goods. Such an interpretation does not bear out from the elaborate machinery put in place in the form of sections, rules and notifications where each has its distinct role towards the object of giving effect to the taxing statute enacted by the legislature. The interpretation sought to be buttressed by the applicant that since their final product is covered by the State Excise, they would be eligible for rebate inspite of not having followed any part of the procedure is pure bluster. It renders the provisions of Section 37C of the CEA, 1944, Rule 18 of the CER, 2002 and the Notification No. 21/2004-CE(NT) dated 06.09.2004 redundant. Needless to say, the provisions of law must be interpreted harmoniously. Any interpretation of law which renders any part of it otiose cannot be given credence. The applicants contention that the Notification No. 21/2004-CE(NT) dated 06.09.2004 is not applicable to export of non-excisable products is also untenable. The notification in the opening paragraph directs grant of rebate of the whole of the duty paid on excisable goods(thereafter referred to as materials) used in the manufacture or processing of "export goods". The use of the term "export goods" is deliberate and encompasses both excisable as well as non-excisable goods.

12. The applicant has made a claim that the show cause notice issued to them for the rejection of the refund claim did not allege failure to follow the procedures prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004. In this regard, Government notes that the show cause notice



issued by the adjudicating authority in refund proceedings is not prescribed by statute but is in the nature of a deficiency memo/discrepancy memo issued to enable the applicant to remedy the defects in the refund application. Be that as it may, the finding of fact recorded in the show cause notice that the AR-4 is not the proper document infers that it is not the prescribed document; Form ARE-2 prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004. Failure to mention the notification no. in the show cause notice issued for rejection of refund does not in any way enhance the prospects of the applicant or redeem them from their failing to follow its procedures. The fact of not having followed the procedure was such that the applicant could not have gone back and rectified this failure on their part. Therefore, in the face of the undeniable and irremediable fact that the applicant had failed to follow the procedures prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004, no harm has been caused to the applicants prospects for grant of refund. Although this aspect has not been examined by the authorities below, Government notes that amongst the enclosures to the revision applications there are documents which declare that the exports are being made in discharge of export obligation under Advance Licences issued to them. Government observes that the Hon'ble Delhi High Court had very categorically opined in the case of International Tractors Ltd. vs. Commissioner of Central Excise & Service Tax[2017(354)ELT 311(Del)] that once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, 1962, the same export transaction cannot be used for seeking rebate of duty under the CER, 2002 as the notifications issued for import of raw materials under Advance Authorizations require that rebate must not be availed. Government observes that the said judgment of the Hon'ble Delhi High Court has attained finality by the dismissal of the Special Leave to Appeal(C) Diary No. 26794 of 2019 filed by International Tractors Ltd.[2019(368)ELT (A292) SC].

13. The applicant has cited several case laws in their defence. Government observes that none of these case laws are applicable to the facts of the present case for the reasons mentioned against them.

(a) Medispan Ltd. vs. CCE, Chennai[2004(178)ELT 848(Tri-Chenn)] – The issue involved is that the Department sought reversal of MODVAT credit taken on inputs used in the manufacture of a final product attracting Nil rate of duty which was exported.

(b) In re : Drish Shoes Ltd.[2006(197)ELT 437(Comm.Appl.)] – The issue involved is the refund of CENVAT credit accumulated due to export under bond or LUT in terms of Rule 5 of the CCR, 2004.

(c) Punjab Stainless Steel Industries vs. CCE, Delhi-I[2008(226)ELT 587(Tri-Del)] - The issue involved is the refund of CENVAT credit accumulated due to export under bond or LUT in terms of Rule 5 of the CCR, 2004.

(d) CCE vs. Drish Shoes Ltd.[2010(254)ELT 417(HP)] - The issue involved is the refund of CENVAT credit accumulated due to export under bond or LUT in terms of Rule 5 of the CCR, 2004.

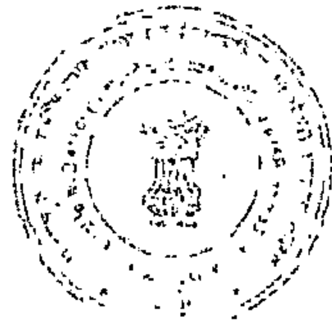
(e) CCE, Jaipur vs. Capital Impex(P) Ltd.[2010(261)ELT 844(Tri-Del)] – The issue involved is admissibility of refund of duty paid on exempted goods cleared for export on payment of duty.

(f) Aurobindo Pharma Ltd. vs. CCE, Vishakhapatnam-I[2011(265)ELT 358(Tri-Bang)] – The issue involved is admissibility of CENVAT credit availed on inputs used exclusively in the manufacture of exempted goods.

(g) CC vs. Toyo Engineering India Ltd.[2006(201)ELT 513(SC)] – The SCN issued to the respondent in the said case did not call upon them to show cause why the facility of project import should not be denied to them.

(h) CCE, Nagpur vs. Ballarpur Industries Ltd.[2007(215)ELT 489(SC)] – The SCN had been issued without invoking the provisions of Rule 7 of the Valuation Rules, 1975 and therefore it was not be open to the Commissioner to invoke the said rule.

14.1 Government observes that the applicant has argued very forcefully about the order rejecting the refund being against Government policy. The facts of the case are that the applicant failed to follow the provisions of Rule

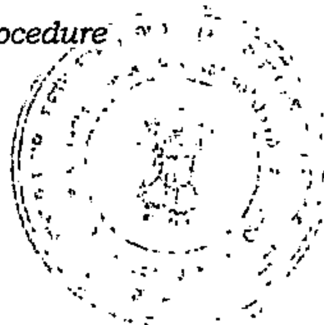


18 of the CER, 2002 read with the procedures prescribed under the Notification No. 21/2004-CE(NT) dated 06.09.2004 for grant of rebate on materials used in export goods. The policy of the Government and its purposes cannot overwhelm the statute and the delegated legislations which are the essential machinery put in place to give effect to the objectives of granting export incentives. Government concurs with the view that technical lapses must be dealt with pragmatically. However, the present case is one where the entire procedure has not been followed. Leniency to an applicant who has not at all followed the procedures laid down under the notification would be a disservice to the diligent applicant who has painfully followed procedures. Such leniency could be counterproductive when a decision is taken as a precedent. It would be pertinent to mention here that there are vast powers vested in the courts of law in terms of the Constitution of India. The courts may in their wisdom exercise such powers and grant relief where their Lordships may deem fit. However, the powers exercised by the Government in revisionary proceedings are in terms of Section 35EE of the CEA, 1944 and Section 129DD of the CA, 1962. These powers are confined to the scope of the CEA, 1944 and the CA, 1962. The present case involves facts where the applicant has failed to follow the law laid down under the CEA, 1944 and the delegated legislations(rules and notifications) thereunder. The Government cannot exceed the scope of the CEA, 1944 and the rules, notifications in the revisionary proceedings.

14.2 Government observes that there are several judgments of the courts which hold that when the law lays down that something is to be done in a particular manner, it must be done in that manner or not done at all. In this regard, Government places reliance upon the following judgments.

(a) Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. vs. UOI[2014(305)ELT 100(All)]

"24. It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner. It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure



deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law. The principle was recognized in Nazir Ahmad v. King-Emperor – AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would like to refer a few recent one."

"35. In any case, ignorance of law is no excuse. Since this Court has also taken the view that procedure with respect filing of ARE-1, looking from the view of straight and simple principle of interpretation, as also looking from the angle of its objective, purpose etc., in my view, is obligatory, the order impugned in the writ petition, cannot be held faulty in any manner."

(b) State of Jharkhand vs. Ambay Cements[2004(178)ELT 55(SC)]

"26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee-the respondent herein."

(c) NGA Steels (P) Ltd. vs. CESTAT, Chennai[2017(350)ELT 51(Mad)]

"19. ....The explanation offered by the appellant as well as M/s Sri Krishna Alloys cannot be said to be a plausible explanation so as to brush aside the stake of the department to its rightful share of duty claim. If something needs to be done in a particular manner, as is mandated under the relevant provision of law, it needs to be done in the said manner and trying to do the same in any other manner than the one contemplated under the law is trying to make mockery of the statutory provision, which is embodied under the Act."

(d) CC, Chennai-I vs. Avenue Impex[2014(306)ELT 69(Mad)]

"36. It is obligatory on the part of the 1st respondent/importer to strictly adhere to the PFA Act and Rules framed thereunder and if the statute prescribed a thing to be done in a particular manner, it should be done only in that manner and not in any other manner. Since the 1st respondent/importer has failed to adhere to the said statute and rules framed thereunder, and the customs authorities were also mandated in the abovesaid circulars/instructions to strictly comply with the provisions of the PFA Act and Rules framed thereunder, the non-furnishing of the full address of the manufacturer and the date of manufacture, on the part of the 1st respondent/importer, cannot be condoned."

15. In the light of the above observations and respectfully following the judgments of the Hon'ble Supreme Court and the Hon'ble High Courts cited above, Government rejects the revision applications filed by the applicant as being devoid of merits and holds that the refund claims filed by the applicant are not admissible.

16. So ordered.

9/6/20

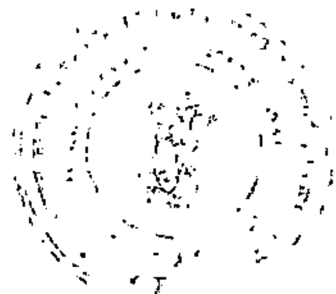
(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 508-510 /2020-CX (WZ) /ASRA/Mumbai DATED 09-06-2020.

To,
M/s Intas Pharmaceuticals Ltd.
Plot No. 457 & 458,
Village Matoda,
Taluka Sanand,
District Ahmedabad,
Gujarat – 382 210

ATTESTED

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



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