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F.No. 198/442/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 5/6/13

ORDER NO. 514 /2013-Cx DATED 04.06.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, 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 the Order-in-Appeal No. YDB/187/RGD/2011 dated 4.3.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-II.
APPLICANT	:	Commissioner of Central Excise, Raigad
RESPONDENT	:	M/s Usan Pharmaceuticals Pvt. Ltd.

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ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Raigad against the order-in-appeal YDB/187/RGD/2011 dated 4.3.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to order-in-original passed by Deputy Commissioner (Rebate), Central Excise, Raigad.

2. Brief facts of the case are that the respondent herein Usan Pharmaceuticals Pvt. Ltd., are Merchant Exporters of medicaments being manufactured by inter-alia M/s Neel-Nayan Pharma Pvt. Ltd. The Medicaments manufactured by the said M/s Neel were exported by the Respondents to Beninsula, Somaliya, Nigeria under six ARE-1s. In each of the ARE-1s, the Respondents mentioned the address of Maritime Commissioner, Mumbai-III as the authority from whom they would claim rebate claim. All the aforesaid consignments except consignment covered under ARE-1 Number 16 dated 21.3.2009 (RC No. 25265/2009-2010 dated 13.01.2010) were exported through JNPT Port while export of medicaments of the excepted one was exported from New Customs House, Ballard Estate, Mumbai. By deficiency Memo-Cum Show Cause Notice-Call for personal hearing dated 22.4.2010, the said six rebate claims were proposed to be rejected based on the following discrepancies noticed by the rebate sanctioning authority:

> *"1 The authority with whom the rebate claim shall be claimed has been shown in the respective ARE-1's as "The Maritime Commissioner of Central Excise, Mumbai-III, 3rd Floor, Vardhan Trade Centre, MIDC Wagle Industrial Estate, Near Passport office, Thane (W) 400 604."*
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> *2. In respect of R.C. No. 25265 dated 13.01.2010 the goods have been exported through New Customs House, Ballard Estate, Mumbai."*

3. Being aggrieved by the said Order-in-Original, the respondent filed appeal before Commissioner (Appeals) who allowed the same in favour of respondent.

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

4.1 The procedure for sanction of rebate is provided under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. As per the procedure stipulated under the said notification "claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacturer or warehouse or, as the case may be the Maritime Commissioner."

4.2 As per Board's Circular No. 770/3/2004-CX dated 9.1.2004 the jurisdiction of the Maritime Commissioner is in relation to the port airport, land customs station or post office under the jurisdiction of the said Commissioner of Central Excise from which the export has taken place. The said Circular states "it is evident that jurisdiction of the Maritime Commissioner is directly related and restricted to the port of the exportation of the export goods under consideration."

4.3 Thus from the above fact, it is clear that the jurisdiction of Assistant Commissioner (Rebate), Central Excise, Raigad is restricted only to the export taking place from the port in the jurisdiction of Raigad Commissionerate. Therefore the Assistant Commissioner (Rebate), Central Excise, Raigad was not authorized by the Board for granting rebate claims in respect of exports taken place beyond the jurisdiction of Raigad District of Maharashtra State.

4.4 A Trade Notice No.07/C.EX/RAIGAD/2004 dated 11.3.2004 was issued by then Commissioner of Central Excise Raigad wherein the Trade and Associations were informed that they will have the option for executing the bond with the Maritime Commissioner of Central Excise Raigad, where the exports are made from JNPT or any other ports located in District Raigad. The Assistant Commissioner (Rebate), Raigad Commissionerate who has been conferred the powers of the Maritime Commissioner, Raigad, Central Excise only for exports effected through JNPT, Nava Sheva.

4.5 In the case of Hotel Leela Venture Ltd. Commissioner of Customs(General), Mumbai 2009 (234) ELT 389 (SC) it has been held that the applicant has to prove that the terms and conditions of a notification has been fulfilled. In the instant case the basic conditions stipulated in the notification has not been fulfilled since the CTI was not issued by the officer authorized by the Board. Further in the case of M/s Golden Dew Factory Vs. Commissioner of Central Excise, Coimbatore 2007 (219) ELT 362 (Tri.Chennai) it has been held that the conditions of a notification are mandatory and not mere procedural hence it was mandatory for the assessee to fulfill the conditions of the said notification and non fulfillment could not be termed as mere technical lapse. Further in the case of Commissioner of Central Excise, Vs. Vishakapatnam Vs. Anandlaxmi Mallebles Pvt. Ltd., 2008(222) ELT 439 (Tr-Bang) it was held that the notification has to be strictly interpreted and that violations of the specific condition of the notification is not a minor procedural lapse.

5. A Show Cause Notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. The respondent vide their written submission dated 27.2.2013 received on 25.3.2013 has requested to decide the case on merits.

6. Personal hearing was scheduled in this case on 05.03.2013. Nobody attended hearing. The respondent vide their letter dated 27.2.2013 requested to decide the case on merit.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records, Government observes that the original adjudicating authority rejected the rebate claim on the ground that the respondents have not submitted their rebate claim before the rebate sanctioning authority Maritime Commissioner, Mumbai, ACCE, Thane as indicated in ARE-1. Further in one of the case,

the export took place from NCH, Mumbai, rebate sanction of which is beyond jurisdiction of the original authority i.e. Maritime Commissioner , Central Excise Raigarh. Commissioner (Appeals) decided the case in favour of respondent party. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

9. Government observes that para 8 of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. In the instant case, they have mentioned in the ARE-1 the address of Maritime Commissioner, Thane as rebate sanctioning authority. Government notes that goods covered vide 5 AREs-1 were exported from JNCH, Nhava Sheva and ACCE Raigarh who is the Maritime Commissioner for export through Seaport Nhavasheva, is the rebate sanctioning authority in this case. There is a force in the pleading of the respondent that this is a clerical mistake in wrong mentioning of rebate sanctioning authority in 5 AREs-1 and same may be condoned. Government in view of the case laws cited by applicant finds that this procedural lapse is condonable as mentioning of wrong rebate sanctioning authority cannot be a valid ground for denying the substantial benefit of rebate of duty paid on exported goods. In these cases, the export of duty paid goods in not in dispute. Department has also not challenged the admissibility of rebate claims to the applicant on merit. Hence in this case the fundamental condition of claiming rebate stands complied with. The rebate claims in respect of these 5 ARE-I allowed by Commissioner (appeals) is in order and can not be faulted with.

9.1 Government observes that in one case, the goods were exported from New Custom House, Mumbai and in such case the original authority i.e. Maritime Commissioner, Raigarh Central Excise, who exercises jurisdiction over exports made

through JNCH, Nheva Sheva will have no jurisdiction. The respondent was pointed out regarding this discrepancy by the original authority and the respondent ought to have withdrawn his rebate claim and could have filed the same before proper authority, which he failed to do. As such, rebate claim w.r.t. goods exported from NCH, Mumbai has rightly been rejected as beyond jurisdiction by the original authority. Hence, the respondent is not entitled for this particular rebate claim.

10. In light of above circumstances, Government upholds the impugned Order-in-Appeal with above modification that rebate claim in respect of exports made from New Customs House Mumbai is not admissible.

11. Revision Application is disposed of in terms of above.

12. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

Commissioner of Central Excise, Raigad
Ground Floor, Kendriya Utpad Shulk Bhavan
Plot No.1, Sector-17, Khandeshwar
New Panvel-410206

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
OSD (Revision Application)
मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revenue)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

G.O.I. Order No. 514/13-Cx dated 04.06.2013

Copy to:-

1. Commissioner of Central Excise & Customs, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai-410206

2. Commissioner of Central Excise (Appeals-II), Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai-400051.

3. The Deputy/Assistant Commissioner of Central Excise (Rebate), Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, New Panwal (West)-410206

4. M/s Usan Pharmaceuticals Pvt. Ltd., 39, B, Suren Road, Andheri (E), Mumbai - 400093

5. PS to JS(Revision Application)

6. Guard File

7. Spare Copy.

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(B.P.SHARMA)
OSD (Revision Application)