

REGISTERED
SPEED POST



F.No. 195/783-783A/2013—R.A.
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.....

Order No. 52-53/2018—CX dated 05-02—2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional 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.106-107/CE/D-II/13 dated 06/05/2013 passed by Commissioner (Appeals), Central Excise, Delhi-II, Delhi.

Applicant : M/s. Parabolic Drugs Ltd., Panchkula

Respondent : Commissioner of Central Excise, Panchkula

ORDER

A Revision Application No. 195/783-783A/2013-R.A. dated 01/08/2013 is filed by M/s Parabolic Drugs Ltd., Panchkula (hereinafter referred to as the applicant) against order-in-appeal no. 106-107/CE/APPL/D-II/13 dated 06/05/2013, passed by the Commissioner (Appeals), Central Excise, Delhi-II, New Delhi.

2. The brief facts leading to the present proceeding are that the applicant filed two rebate claims under Rule 18 of the Central Excise Rules, 2002 for rebate of central excise duty paid on the goods cleared from their factory for export on payment of duty through CENVAT account. However, these rebate claims were rejected by the original authority on the ground that the exported goods were received back for replacement under warranty, these were re-exported to a different entity based in a different country, the applicant was not able to show that the goods were the same as were exported initially, the goods were exported initially from applicant's Dera Bassi unit while the re-exported goods are cleared from their Panchkula unit and the export proceeds are not received against the re-exported goods. Being aggrieved by this order, the applicant filed an appeal before the Commissioner (Appeals) who set aside the order-in-original vide Orders-in-Appeal Nos. 25,26/CE/D-II/2011 dated 14/01/2011 and directed the original adjudicating authority to pass a speaking order

● after re-verifying the rebate claim freshly filed by the applicant and giving an opportunity to the applicant of being heard. In compliance of the Commissioner (Appeals)'s Order, the original adjudicating authority re-adjudicated the case and granted rebate of duty to the applicant. However, the Department filed an appeal to the Commissioner (Appeals) and the same is allowed vide Order-in-Appeal No. 106-107/CE/D-II/13 dated 06/05/2013. The applicant has filed the present revision application against this Commissioner (Appeals)'s order mainly on the ground that since the impugned goods have been exported on payment of duty the rebate of duty should be sanctioned to the applicant without considering other facts that they have re-exported the goods from their factory at Panchkula and the proof of non-availability of reprocessing facility in Dera Bassi factory is not provided.

3. Personal hearing was granted on 22/12/2017 which was attended by Sh. Rupender Sinhmar, Advocate, on behalf of the applicant who mainly reiterated the above grounds of revision and furnished copies of Orders-in-Appeal dated 14/01/2011. Sh. Bal Krishna, Superintendent, appeared on 08/12/2017 for the respondent and submitted written submissions to oppose the revision application.

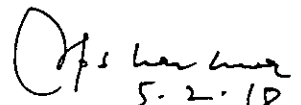
4. On examination of the revision application and the order of the Commissioner (Appeals), the Government finds that the Commissioner

(Appeals), vide his above referred orders-in-appeal, has allowed the appeal of the Department only on the ground that the applicant has not been able to establish that imported goods re-processed in their Panchkula factory were only re-exported; that the applicant has not proved that Dera Bassi factory did not have re-processing facility and export proceeds have not been received against the re-exported goods. However, the applicant has pleaded in the revision application that these are not relevant considerations at all for the admissibility of rebate of duty to them and the Commissioner (Appeals) should have allowed rebate of duty to them since the export of goods on payment of duty from Panchkula factory is not in dispute. The Government finds this contention of the applicant has legal force and cannot be ignored as the two primary considerations for rebate of duty as per Rule 18 of Central Excise Rules, 2002 and Notn. No. 19/2004 dated 06/09/2004 are that the goods should be exported and the duty of excise should be paid on the exported goods. These facts are not doubted anywhere in the orders of the Commissioner (Appeals) and when it is true that the goods have been actually exported by the applicant on payment on payment of duty and the violation of any other condition of Notn. No. 19/2004 is not alleged, the rebate of duty against the duty of excise actually paid on the exported goods cannot be refused under the above cited legal provisions irrespective of the fact whether the re-exported

● goods are the same which were imported by the applicant on exported goods being rejected by the foreign buyer or the applicant had reprocessing facility at their Dera Bassi unit or not. Such requirement of correlation with imported goods of the re-exported goods is a crucial condition when Drawback of duty is claimed under Section 74 of the Customs Act, 1962. But there is no such condition for granting of rebate of duty under the above referred legal provisions. As regards non-realization of export proceeds against re-exported goods, the applicant has claimed that they have realized the same from the foreign buyer in connection with their initial export consignments and the goods exported from their Panchkula unit are replacement for the earlier exported goods only. These facts are not refuted by the Commissioner (Appeals) also in his order. Moreover, the issue regarding non-realization of foreign proceeds was discussed in detail by the Commissioner (Appeals) earlier in his order dated 14/01/2011 and he has categorically observed that there is no condition under Rule 18 of Central Excise Rules, 2002 and notification no. 19/2004 that proof of realization of export proceeds should be produced by the claimant. Further, he has also quoted CBEC's circular no.354/70/97-CX dated 13/11/1997 in which a detailed procedure has been given for establishing the proof of export but it is nowhere mentioned therein that BRC is a mandatory document for establishing proof of export and for

sanctioning of rebate of duty. Evidently the earlier order of the Commissioner (Appeals) has not been set aside by any other higher authority and, therefore, the Commissioner (Appeals) in his second order did not have any legal basis to deviate from the ruling of the earlier Commissioner (Appeals) on this issue. All the more, the Commissioner (Appeals) in his second order has not adduced any reason for disagreeing with the earlier view on this point. Considering the above discussed facts and the legal provisions, the Government is of the considered view that the Commissioner (Appeals) has erroneously set aside the Deputy Commissioner's Orders dated 11/05/2011 whereby the rebate of duty was sanctioned to the applicant in compliance of the Commissioner (Appeals)'s first order dated 14/01/2011.

5. Accordingly, the Order-in-Appeals dated 06/05/2013 is set aside and the Revision Application is allowed.


5.2.18
(R. P. Sharma)

Additional Secretary to the Government of India

M/s Parabolic Drugs Ltd.
45, Industrial Area, Phase-II,
Panchkula, Haryana

G.O.I. Order No. 52-53/18-Cx dated 05-02-2018

Copy to:-

1. Commissioner of Central Excise, SCO 407-408, Sector-8, Panchkula.
2. Commissioner (Appeals), Central Excise, Delhi-II, C.R. Building, I.P. Estate, New Delhi.
3. Assistant Commissioner, Central Excise Division, SCO:408-408, Sector:8, Panchkula.
4. PA to AS(Revision Application)
- ✓ 5. Guard File
6. Spare Copy

Attested by

Mouj
5-2-18

Section officer

Revision Application unit