

REGISTERED

SPEED POST



F.No. 195/ 1484/ 12- 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... 20/9/18

Order No. 526/18-Cx dated 13-9-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under section 35EE of the Central excise Act, 1944.

Subject : Revision Application filed under section 35EE of the Central excise Act, 1944 against the Order-in-Appeal No. 173-CE/ MRT-I/ 2012 dated 28.06.2012, passed by the Commissioner of Customs (Appeals), Customs & Central Excise, Meerut-I.

Applicant : M/s Cooper Pharma Limited

Respondent : Commissioner of CGST & C. Ex., Dehradun

ORDER

A Revision Application no. 195/ 1484/ 12- RA dated 05.11.2012 has been filed by M/s Cooper Pharma Limited, Dehradun (hereinafter referred to as the applicant) against the Order-in-Appeal no. 173-CE/ MRT-I/ 2012 dated 28.06.2012, passed by the Commissioner of Customs (Appeals), Customs & Central Excise, Meerut-I, whereby the appeal of the applicant filed against the order of the original adjudicating authority was rejected.

2. The Revision Application has been filed mainly on the grounds that the Commissioner (Appeals) has erroneously rejected their appeal and upheld the Order-in-Original on the ground that the Central Excise duty at the rate of 8.24% was actually paid on the input Meropenem obtained from M/s Orchid Chemicals and Pharmaceuticals Limited, Aurangabad, and they used 100 vials in excess in comparison to the input-output ratio declared by the applicant earlier.

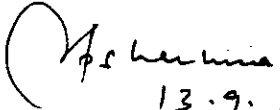
3. Personal hearings were earlier fixed on 12.06.2018 and 09.07.2018. However, these remained unavailed and finally the hearing was held on 27.07.2018 which was attended by Sh. Naveen Mullick, advocate, on behalf of the applicant. But no one appeared for the

respondent on any of the three occasions and no reply is also filed with reference to the Revision Application filed by the applicant from which it is implied that the respondent does not have any say in this matter.

4. The Government has examined the matter and it is observed that the lower authorities have not explained in their orders as to how the duty of excise of Rs.65,886.71/- only was paid at the rate of 8.24% on Meropenem bought by the applicant from M/s Orchid Chemicals and Pharmaceuticals Limited. On the contrary, from the tax-invoice-cum-challan no. 197 dated 15.02.2010 provided by the applicant, it is evident that the applicant had actually paid Central Excise duty of Rs.1,04,335.15/-. Further, it appears from the invoice that higher amount of excise duty at the rate of 13.05% has been paid in this case under notification no. 23/ 2003 which is relevant for 100% EOU. But ultimately the total duty paid by the supplier of the inputs is Central Excise duty only for which the applicant was entitled to avail rebate of duty under Rule 18 of Central Excise Rules and notification no. 21/ 2004. Thus, the applicant's rebate claim was reduced to the extent of Rs.38,448.44/- erroneously. Similarly, the Government finds that the lower authorities have rejected the rebate of duty of Rs.86.42/- on the grounds that this rebate of duty is in respect of excess 100 vials *vis-à-vis* input-output ratio declared by the applicant. But the Government has

noticed that the applicant had declared +- 5% in addition to the number of vials declared by the applicant and the same has been completely ignored while considering the rebate claims of the applicant. The said +- to the extent of 5% was declared manifestly on account of the breakage of vials during the manufacturing process and the same is quite natural as vial is fragile goods. The quantity of vials considered by the departmental authorities as excess is actually well within the 5% of the declared vials and thereby there is no basis for saying that the applicant claimed wrong rebate of duty in respect of 100 vials.

5. In view of the above discussions, the Order-in-Appeal is set aside and the Revision Application is allowed.

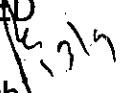

13.9.18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Cooper Pharma Limited

C-3, Selaqui Industrial Estate,

Dehradun.

ATTESTED

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 526/18-C dated 13-9-18

Copy to:

1. Commissioner of CGST & C. Ex., Dehradun.
2. Commissioner of Customs (Appeals), Customs & Central Excise,
Meerut-I.
3. Deputy/ Assistant Commissioner of CGST & C. Ex Division,
Dehradun.
4. PS to AS(RA)
5. ~~Guard File.~~