

REGISTERED
SPEED POST



F.No. 195/ 689/ 12- RA
F.No. 195/ 690/ 12- RA
F.No. 195/ 691/ 12- RA
F.No. 195/ 1482/ 12- RA
F.No. 195/ 1483/ 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..20/8/18...

Order No. 527-531/2018-Cx dated 13-8-18 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 Nos. 79-CE/ MRT-I/ 2012 dated 23.03.2012, 80-CE/ MRT-I/ 2012 dated 23.03.2012, 81-CE/ MRT-I/ 2012 dated 23.03.2012, 165-CE/ MRT-I/ 2012 dated 28.06.2012, 166-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

Five Revision Application nos. F.No. 195/ 689/ 12- RA dated 17.07.2012, F.No. 195/ 690/ 12- RA dated 17.07.2012, F.No. 195/ 691/ 12- RA dated 17.07.2012, F.No. 195/ 1482/ 12- RA dated 05.11.2012 and F.No. 195/ 1483/ 12- RA dated 05.11.2012 have been filed by M/s Cooper Pharma Limited, Dehradun (hereinafter referred to as the applicant) against the Order-in-Appeal nos. 79-CE/ MRT-I/ 2012 dated 23.03.2012, 80-CE/ MRT-I/ 2012 dated 23.03.2012, 81-CE/ MRT-I/ 2012 dated 23.03.2012, 165-CE/ MRT-I/ 2012 dated 28.06.2012 and 166-CE/ MRT-I/ 2012 dated 28.06.2012, passed by the Commissioner of Central Excise (Appeals), Meerut-I, whereby the appeals of the applicant filed against the orders of the original adjudicating authority were rejected.

2. The brief facts leading to the Revision Applications are that the applicant had filed rebate claims in respect of inputs under notification no. 21/ 2004- CE (NT) dated 06.09.2004. However, these were rejected by the jurisdictional Assistant Commissioner on the ground that the applicant had not obtained prior permission before export of the goods as stipulated in the above stated notification. Their appeals filed before the Commissioner (Appeals) were also rejected and orders of the Assistant Commissioner were upheld. Consequently, the applicant has filed the five Revision Applications mainly on the ground that they had

filed an application before the Assistant Commissioner before the export of goods intimating the goods to be exported, the inputs to be used and the rates of duty etc and there is no provision for seeking prior permission before the export of the goods.

3. Personal hearings were earlier fixed on 12.06.2018 and 09.07.2018. However, these remain^{ed} 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.

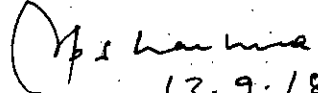
4. The Government has examined the matter and it is observed that the rebate claims of the applicant have been rejected solely on the ground that the applicant had not obtained prior permission for export of goods and there is no dispute regarding export of goods and the use of duty paid inputs. Further the claim of the applicant that they had filed a declaration to the Assistant Commissioner a day before the export of the goods is also not contested by the departmental authorities. Above all, it is also found on record that the declaration with regard to export of goods and the input-output ratio was finally approved by the jurisdictional Deputy Commissioner as informed by the Superintendent

(Technical) of the Dehradun Division vide his letters C.No.(V)-CE (30) Tech/ Cooper/ 10/ 10/ 3248 dated 01.04.2010, C.No.(V)-CE (30) Tech/ Cooper/ 10/ 10/ 2669 dated 12.03.2010 and C.No.(V)-CE (30) Tech/ Cooper/ 10/ 10/ 17197 dated 20.12.2010, and thus the declaration of the applicant was accepted *in toto*. In the face of these facts, the rejection of the rebate claims on the flimsy reason that the applicant did not obtain prior permission from the Assistant Commissioner is manifestly unjust and improper. In fact, the said notification mainly emphasises on filing of declaration containing the relevant informations which was undeniably filed by the applicant in this case and the Notification does not specify anywhere that prior permission of the Assistant Commissioner to manufacture the exported goods will be mandatory. The purpose of giving declaration before the export of goods is also just to enable the jurisdictional authorities to verify the correctness of input-output ratio and their classification etc to ensure that wrong rebate of duty is not claimed, but its purpose is not at all to give an excuse to the jurisdictional authorities to reject the rebate claims on such technical and trifle reason. The lower authorities have also not elaborated as to how non-observance of prior approval/ permission in this case affected the revenue interest and enabled the applicant to claim wrong rebate of duty. On the contrary, from the subsequent

approval of the declaration after the gap of more than four months from the date of filing of the application by the applicant, it is proved that the applicant had given all relevant details correctly and accordingly proper rebate claims were filed by the applicant in these cases. Late approval of the applicant's declaration also clearly buttress the case that ground of prior approval taken by the revenue authorities is completely unreasonable as the applicant could not be expected to wait for more than four months in effecting their first export of goods where final approval was also given without conducting any detailed verification etc. Moreover, the objective of the aforesaid notification is to grant rebate of duty and not to deny the same for insignificant reason as cited in the orders of the lower authorities. Above all the applicant's declarations were ultimately approved after export of the goods without effecting any change in input-output ratio etc and the rebate claims were filed by the applicant in accordance with such approved declaration only. Considering all these facts and the policy of the Government to grant rebate of duty to promote the export of the goods, the Government agrees with the applicant's case that the Commissioner (Appeals) has erroneously upheld the original authorities' orders rejecting the applicant's rebate claims for the trifle reason. Accordingly, the Government remand this matter to the jurisdictional Assistant/ Deputy

Commissioner of the Division to examine the admissibility of rebate claims and correctness of the amounts etc in the light of the declarations given by the applicant which were subsequently approved by them and the relevant duty paying documents etc. It is needless to say here that due opportunity will be provided to the applicant before the rebate claims are re-determined.

5. In view of the above discussions, the Orders-in-Appeal, as mentioned above, are set aside and the Revision Applications are 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. ^{527531/2018-Ex} 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.