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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.198/14/2013-RA

Date of Issue:

ORDER NO. 56A/2020-CX (WZ)/ASRA/MUMBAI DATED 31.07.2020 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 : Commissioner of Central Excise, Customs & Service Tax,
Raigad.

Respondent : M/s Glow Pharma Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/411/RGD/R/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai -III.



ORDER

This Revision Application is filed by the Commissioner of Central Excise, Customs & Service Tax, Raigad (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/411/RGD/R/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai -III.

2. The issue in brief is that the M/s Glow Pharma Pvt. Ltd., 101, B Wing, Prathamesh Apartment, Azad Nagar, Andheri(F), Mumbai 400 099 (herein after as 'the Respondant') a merchant exporter had filed the following rebate claims for goods cleared for export from their manufacturer M/s Pharmax(India) Pvt. Ltd., Mumbai under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 :

Sl. No.	RC No. date	ARE 1 No & date	MR date	Amount claimed (Rs.)
1	18812 dt 2.12.10	7/10-11 dt 17.5.10	28.5.10	24,514
2	18813 dt 2.12.10	10/10-11 dt 3.6.10	20.6.10	21,012
3	18814 dt 2.12.10	11/10-11 dt 9.6.10	22.6.10	14,008
4	18815 dt 2.12.10	6/10-11 dt 13.5.10	15.5.10	10,506
5	18816 dt 2.12.10	44/09-10 dt 30.12.09	21.1.10 & 12.2.10	21,424
			Total	91,464

The Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 771/11-12/AC(Rebate)/Raigad dated 31.05.2012 rejected the rebate claim on the grounds that

- (i) goods in respect of Rebate claim Nos 18812, 18815 & 18816 were removed from a place other than the factory or depot. The goods were removed from a godown in Bhiwandi ;
- (ii) the declaration at Sr.No. 3(a),(b) and (c) have not been filled up.

Aggrieved, the Appellant then filed an appeal with the Commissioner of Central Excise(Appeals), Mumbai -III. The Commissioner (Appeals) vide Order-in-Appeal No. BC/411/RGD/R/2012-13 dated 27.11.2012



- (i) that in respect of Rebate claim Nos 18812, 18815 & 18816, the Respondent had not made any specific submissions on the said issue either in the ground of appeal or during personal hearing. It is for them to prove their point. Hence rebate in respect of these claims are not admissible.
- (ii) that the exporter is merchant exporter and he has no role in availing Cenvat credit or otherwise and the rebate is claimed on the finished exported goods. Non filing up the columns by the merchant exporter will not have any bearing on admissibility of the rebate claim. Hence rebate is admissible only in respect of rebate claims No. 18813 and 18814.

3. Being aggrieved, with that portion of the order in respect of rebate claims No. 18813 and 18814, the Department then filed the current Revision Application on the following grounds :

- (i) The manufacturer was required to certify whether he is availing Cenvat credit facility or not. The Respondent is eligible for rebate of duty irrespective of whether manufacturer of the goods exported avails Cenvat facility or not. The exporter is a merchant exporter and he has no role in availing Cenvat credit or otherwise. Sr.No. 3(b) talks about availment of Notification No. 21/2004(NT). The said notification provide for rebate of duty on excisable goods used in manufacture/processing of export goods and the procedure involved. Whereas, in the instant case rebate is claimed on the finished exported goods. As regards Sr.No. 3(c) of the ARE-1, it talks about availment or otherwise of Notification No. 43/2001(NT). The said notification provides for procurement of inputs without payment of duty for manufacture of export goods. Whereas, in the instant case rebate is claimed on the finished exports goods. Non filling up these columns by the merchant exporter will not have any bearing on the admissibility of the rebate claim. The Commissioner, Central Excise(Appeals) allowed the appeal in respect of Rebate claims No, 18813 abd 18814.



- (ii) The procedure as laid down in Para 3(a)(xi) of the Notification No.19/2004-CE(NT) dated 06.9.2004 is mandatory in nature as the information provided in ARE-1 is nothing but a self assessment. However, the Respondent had not followed the same in respect of the incomplete declaration at Sr. No. 3(a), 3(b) and 3(c). The ARE-1 is a statutory form prescribed under Notification No.19/2004-CE (NT) dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether benefits under specified Notification's have been availed by the exporter or not. This is a statutory requirement which have not been complied with by the Respondents. ARE-1 document is giving all details including self assessment. After self assessing the said document, the claimant presented the same to the proper officer. Once the said document is assessed by the claimant, it is not open for them to re-assess it. Board has also clarified vide Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. Declaration under 3(a) is for availment/non availment of cenvat credit on inputs, declaration under 3(b) is for availment/non availment of benefits under Notification No. 24/2004(NT) which provides for rebate on inputs including packing material used in manufacture/processing of goods for export and declaration under 3(c) is for availment/non availment of Notification No. 43/2001(NT) which provides procurement of inputs including packing materials without payment of duty for manufacture/processing of goods for export. The declaration under 3(a), 3(b) and 3(c) are vital. As in absence of the same the adjudicating authority will not have knowledge whether the claimant is availing undue double benefits such as (A) Rebate on finished goods as well as rebate on inputs or (B) Rebate on finished goods as well as procurement of duty free inputs. To nullify such possibilities it is provided in Form ARE-1 regarding a declaration under 3(a), 3(b) and 3(c) which is being mandatory in nature. Therefore, in absence of complete declaration, the adjudicating authority can not ascertain the admissibility of rebate.



- (iii) Further Para 2 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions provides as under —

'2. Forms to be used

2.1 ARE-I is the export document (Annexure 14 in Part 7), which shall be prepared in quintuplicate (5 copies). This is similar to the erstwhile AR1. This document shall bear running serial number beginning from the first day of the financial year. On ARE-I, certain declarations are required to be given by the exporter. They should be read carefully and signed by the exporter or his authorized agent. The different copies of ARE-I forms should be of different colours, as indicated below."

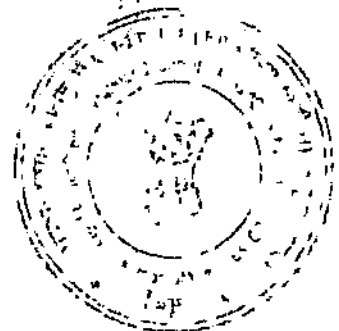
- (iv) They prayed that the Order-in-Appeal be set aside and the Order-in-Original dated 31.05.2012 be upheld and restored.

4. A personal hearing in the case was held on 25.02.2020. No one was present from the Applicant Department. Ms Veena Moily, Accountant and Shri A.R. Gadre, Consultant appeared on behalf of the Respondent.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. In respect of issue regarding the declaration at Sr.No. 3(a), (b) and (c) being incomplete, Government observes that the Respondent in their appeal before the Commissioner(Appeals) had submitted that the goods in the case of R.C. No. 18813 and 18814 were removed from the Respondents godown in original packed condition. Hence they had fulfilled the CBEC relevant circular and Non filling up of Sr.No. 3(a), (b) and (c) Column have no bearing on the rebate claim.

7. The Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to

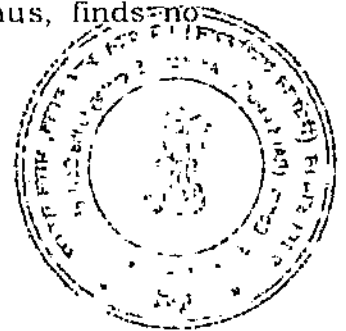


Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement.

8. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, lays down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

9. Government finds that the deficiencies observed by the adjudicating authority are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

10. In view of the above, Government holds that the impugned Order-in-Appeal of Commissioner (Appeals) is legal and proper. Government, thus, finds no



infirmity in the impugned Order-in-Appeal No. BC/411/RGD/R/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai -III and the same is upheld.

11. The Revision Application is rejected in terms of above.

12. So ordered.

(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 564/2020-CX (WZ)/ASRA/Mumbai DATED 31.07.2020.

To,
The Commissioner of Central Goods & Service Tax,
Belapur Commissionerate,
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai 400 614.

Copy to:

1. M/s Glow Pharma Pvt. Ltd., 101, B Wing, Prathamesh Apartment, Azad Nagar, Andheri(E), Mumbai 400 099.
2. Sr. P.S. to AS (RA), Mumbai
3. Spare Copy.

ATTESTED

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

