

REGISTERED  
SPEED POST



F.No. 195/647/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....17/6/13

Order No. S65 /13-~~cx~~ dated 14-06-2013 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, 1944 against the Order-in-Appeal No. 18-CE/MRT-I/10-11 dated 28-04-2011 passed by Commissioner of Central Excise (Appeals), Meerut-I.
- APPLICANT : M/s. Cooper Pharma Ltd., Dehradun, UP.
- RESPONDENT : Commissioner of Central Excise, Meerut-I.

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## ORDER

This revision application is filed by M/s. Cooper Pharma Ltd., Dehradun, UP against the Order-in-Appeal No. 18-CE/MRT-I/10-11 dated 28-04-2011 passed by Commissioner of Central Excise (Appeals), Meerut-I with respect to Order-in Original passed by Deputy Commissioner of Central Excise, Division, Dehradun.

2. Brief facts of the case are that the applicant registered with the Central Excise department, are engaged in the manufacture of excisable goods namely 'Drugs and Medicines'. The applicants filed the rebate claim for Rs. 1,69,935/- under rule 18 of the Central Excise Rules, 2002 stating that the said duty was paid by them on inputs used in the manufacture of export goods exported under the cover of ARE-2 No. 37/09-10 dated 26-05-2009 under the provisions of Notification No. 21/2004-CE (NT) dt. 06-09-2004 as amended. A show cause notice dated 05-08-2010 was issued to the applicants to reject the rebate claim on the sole ground that the applicant exported the medicine namely, "Tamol-100" capsules vide ARE-2 dt. 26-05-2009, whereas the requisite declaration under the notification was filed by them on 11-06-2009 i.e. much after processing and export of finished goods. The adjudicating authority vide the impugned order rejected the rebate claim on the grounds as proposed in the show cause notice.

3. Being aggrieved by the said Orders-in-Original, applicants filed appeals before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Filing of input output ratio under Notification No. 21/2004-CE (NT) is a procedural requirement. The applicant is entitled for rebate claim in question because the substantive benefit should not be denied to the applicant merely on procedural infractions. They submit that rebate and other such promotion scheme of the Government are incentive oriented beneficial schemes intended to boost export

in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal, interpretation is to be accorded in case of technical and procedural lapses if any, in order not to defeat the very purpose of such scheme. In the present case, there is no allegation in the show cause notice or any evidence in the impugned orders that the inputs against which the duty has been paid by the applicant are not used in manufacture of export goods. Even there is no evidence on record that the goods in question has not been exported by the applicant and hence in absence of such evidence the rebate claim in question cannot be denied to the applicant for not following the conditions and procedures of Notification No. 21/2004-CE (NT). Even it is not the case of the department that the applicant has not procured Central Excise duty paid inputs for manufacturing of the goods exported out of India.

4.2 The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. Applicant further submits that as long as this requirement is met other procedural deviations can be condoned. Rebate and other such export promotion schemes of the Government are incentive oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt. Liberal interpretation is to be accorded in case of technical lapses, if any.

5. Personal hearing was scheduled in this case on 07-12-2012 and 20-02-2013. Nobody attended the hearing. Hence, Government proceeds to decide the case finally on the basis of available records.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

7. Government observes that the original authority had rejected input rebate claim of applicant filed under Notification No. 21/2004-CE (NT) on the ground that the goods were exported on 26-05-2009, where as they filed requisite declaration

under the said notification on 11-06-2009 i.e. much after processing and export of the goods. As such, they violated condition of the notification. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that adjudicating authority in his findings has observed as under:-

" 4. In the instant case issue is to be decided as to whether the claimant is entitled for rebate of excise duty which was paid by them on inputs used in manufacture of export goods in terms of Notification No. 21/2004-CE (NT) dtd. 06-09-2004. In the show cause notice it is alleged that the claimant has failed to fulfil the conditions of the aforesaid notification in as much as that the claimant had failed to obtain the requisite permission by the Asstt./Deputy Commissioner for manufacture or processing and export of finished goods. In this regard, as per Notification No. 21/2004-CE (NT) dtd. 06-09-2004, read with chapter 8 of CBEC's excise manual of supplementary instructions, a manufacturer intending to claim rebate of the duty paid on inputs used in manufacture of export goods shall file a declaration with the Asstt./Deputy Commissioner of the Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the material so used, both in words and figures, in relation to the finished goods to be exported. Where there are more than one export product, separate statement of the input-output ratios may be furnished for each export product. The consumption should be net or recycled material. Where recoverable wastage are generated but not recycled but sold on account of its unsuitability the same should be clearly reflected in the declaration. The declaration should also enclose, in case of a new product or in case where the manufacturer is not regularly manufacturing the export goods and clearing for home consumption or export, a write up of manufacturing process.


5. In the said notification it is further laid down that the Asstt./Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or

*process. If, after such verification, the Asstt./Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and exports of finished goods. However, in the present case, this condition of the notification is not fulfilled in as much as that the claimant has effected export of their goods namely "Tamol 100" capsules vide ARE-2 No. 37/2009-10 dtd. 26-05-2009 whereas the declaration under Notification No. 21/2004-CE (NT) dtd. 06-09-2004 was filed by the notice on 11-06-2009 i.e. after the export of goods. This fact has also been confirmed by the Range officer in his verification report dated 04-08-2010. Since in the present case, claimant has failed to fulfil the primary condition of the Notification No. 21/2004-CE (NT) dtd. 06-09-2004, it is concluded that the claimant is not eligible for rebate of duty paid by them on inputs used in manufacture of export goods in terms of Notification No. 21/2004-CE (NT) dtd. 06-09-2004. "*

8.1 Government observes that the condition and procedures prescribed in Notification No. 21/04-CE (NT) r/w chapter 8 of CBEC Excise Manual on supplementary instructions has not been followed. The declaration of input and output has neither been filed before processing and export of goods nor any export facts approval is granted by competent authority. In such a situation the use of duty paid inputs in the manufacture of exported goods cannot be determined correctly. As such, the input rebate claim is rightly held inadmissible by lower authorities. In view of this position, Government do not find any legal infirmity in the impugned Order-in-Appeal and therefore upholds the same.

9. Revision application is thus rejected being devoid of merits.

10. So, Ordered.




(D.P. Singh)

Joint Secretary to the Government of India

M/s. Cooper Pharma Ltd.,  
C-3, Selaqui Industrial Estate,  
Dehradun, UP.

ATTESTED

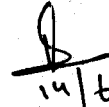
  
14/6  
(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)

Order No. 565 /13-Cx dated 14.06.2013

Copy to:

1. The Commissioner, Customs & Central Excise, Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005.
2. The Commissioner (Appeal), Customs & Central Excise, Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005.
3. The Deputy Commissioner of Central Excise, Division, Meerut-I.
4. Guard File.
5. PS to JS (Revision Application)
6. Spare Copy

ATTESTED

  
14/6

(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)