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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.195/333/2014-RA/5055 Date of Issue: 01.09.2020

ORDER NO.573 /2020-CX (WZ)/ASRA/MUMBAI DATED 10.08.2020 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.

Applicants : M/s Stallion Laboratories Pvt. Ltd., Ahmedabad.

Respondents : The Commissioner of Central Excise, Ahmedabad-II

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No DMN-EXCUS 000-APP-147-14-15 dated 01.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman

ORDER

This Revision Application is filed by M/s Stallion Laboratories Pvt. Ltd., 8th floor, Devpath, B/h Lal Bunglow, Off. C. G Road, Ahmedabad-380 006 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No DMN-EXCUS-000-APP-147-14-15 dated 01.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman.

2. Briefly, the Applicant a Merchant Exporter had filed rebate claim dated 06.09.2004 in respect of 05 ARE-1s totaling to Rs. 5,50,935/- (Rupees Five Lakhs Fifty Thousand Nine Hundred and Thirty Five Only) against the exports of the goods from their manufacturer M/s Injectcare Parenterals Pvt Ltd. Vapi. The Deputy Commissioner, Central Excise, Customs & Service Tax, Division-I, Vapi vide Order-in-Original No. VAPI/REBATE/59/2014-15 dated 03.04.2014 rejected the rebate claim on the grounds that the description in ARE-1s and those in the concerned Shipping Bills/Commercial invoices are different and hence it cannot be established that the gods cleared from the manufacturer on payment of duty are the same which have been exported and also the ARE-1s has been endorsed only by the Inspector of Customs only on the back side of ARE-1(Customs portion). Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman. The Commissioner(Appeals) vide Order-in-Appeal No DMN-EXCUS-000-APP-147-14-15 dated 01.08.2014 rejected their appeal and upheld the Order-in-Original.

3. Aggrieved, the Applicant filed the Revision Application on the following grounds:

(i). The Lower Appellate Authority totally ignored their submission dated 05.07.2014 and 17.07.2014 whereby sufficient corroborative documentary evidences were furnished to prove that the good, exported under Shipping bill were the same which was cleared on

payment of Excise Duty under Excise Invoice, ARE-1 of Manufacturer and Commercial Invoice the Applicant(Merchant Exporter).

(ii) The export Order received the Applicant from their oversea buyer wherein the description of goods appeared as "CESTAZID 1000 (Ceftazidime I gm powder injection), DYZITAM (Piperacillin 4mg Tazobactum 500 mg Powder Injection), DYZITAM (Piperacillin 2mg + Tazobactum 250 mg Powder Injection) and TAZBACTAM (Piperacillin 4gm + Tazobactam 500 mg Powder Injection), CEFOXIN (Cefriaxone Injection 1gm), STAFIPIME 1 GM Infection (Cefepime Inj), PRAZITAM 4.5 (Piperacillin 4mg + Tazobactum 500mg. Powder Injection, NAZOVAC (Piperacillin 4mg + Tazobactum 500 mg Powder Inj.), FRIAX ION (Cefriaxone Inj. I gm)" which tallied with Export Invoice and Shipping Bills.

(iii) The copy of Purchase Order issued to the Manufacturer wherein the Description of goods is shown as Friax Injection, Prazitam 4.5, Dyzitam, Nazovac, Cestazid 1000, Tazhactam, Stafipime 1GR which tallied with the Excise Invoices and ARE-1. The Manufacturer, on receipts of the Purchase Order obtained the product permission from the Drug Authority of India and in this permission the Description of Product is described as Firax 1000, Cefoxin, Cestazid 1000, Dyzitam, Tazbactam, Nazovac, Stafipime-1000.

(iv) The Manufacturer, in case of export of goods, through Merchant Exporters under claim of Rebate of duty , prepared the Export documents i.e. Excise Invoice, ARE-1 (duly signed by manufacturer and Merchant Exporter) packing list and after debiting the duty amount from Cenvat Credit Account Register(RG 23A Pt. II) removed the goods under SRP procedure laid down in respective notification.

(v) The Proper officer of Customs Port of Export, after due examination of goods Physically with export documents such as Excise Invoice, ARE-1, Packing List, Commercial Export Invoice, Shipping Bills; counter signed all these documents and allowed the export. However, though

the Customs has allowed the export, in the present case, the export goods, being Pharmaceutical Product, necessary clearances (NOC) is required to be obtained from the Assistant Drug Controller, having office at Port of Export or ICD. , who had then verified all the Export Documents i.e. Description of export goods and Batch No. with Product Permission with Commercial Export Invoice and other export documents and endorsed the same by alloting Number in Commercial invoice and this number also feed in EDI System of the Customs. Therefore, it is not possible as well as no reason to do so to export the goods other than what manufactured by the manufacturer and cleared under Excise Invoice and ARE-1.

(vi) In the case cited in impugned order KAIZEN ORGANIC PVT. LTD [2012 (281) ELT 734 (GOI)], the exported goods was "Memo' Powder' which is Raw Materials for manufacture of Food, Pharmaceuticals, Perfumery and Flavoring Industries such as Cold Balms, Tooth Paste, Pain Balms, Dabur Pudin Hara etc. Whereas, in their present case, the export goods are Consumer Medicine and therefore it is not possible to alter the product physically as well as even the A.D.C officer also not allowed such things therefore the case law cited and relied upon by Lower Appellate Authority is not squarely applicable.

(vii) Moreover, the Batch No. shown in Excise Invoices Nos. are tallied with the packing list of Export Invoices and therefore nexus is proved. The Applicant not admitting but presuming that the goods removed from factory under ARE-1 and Excise Invoice is not exported than also the Department has not unearth where the goods cleared from factory has been diverted as well as the goods exported where it produced. In light of above discussion and in absence of any corroborative documents proving the above facts, the conclusions of Adjudicating Authority and Lower Appellate Authority is not proper and just.

(h) All these export documents had been submitted before the Customs for examination i.e. ARE-1, Excise Invoice, Commercial Export Invoice,

Packing list attached to commercial Export Invoice and Shipping Bills, showing the comparison of the description of export goods with the Export order received from overseas Buyer and place to the Manufacturer by the Applicant. From these documents, one can see that the description of the exported products are more or less tallied and therefore the ground for rejection of rebate claim is not sustained in law. In this they relied on the decision IN RE: Cotfab Exports [2006 (205) ELT 1027 (GOI)].

4. Personal hearing in this case was held on 21.11.3019. Shri Dhaval H. Shah, Manager and Shri R.R. Dave, Consultant appeared on behalf of the Applicants.

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

6. On perusal of the records, it is observed that the adjudicating authority had rejected the rebate claims on the grounds that

(i) the description of the goods reflected in the ARE-1s, Shipping Bill and Commercial Invoices are different.

(ii) in respect of 3 ARE-1s the endorsement by the customs officer on the reverse side of the ARE-1s raises doubt regarding actual export of the goods.

7. In respect of the description of the goods reflected in the ARE-1s, Shipping Bill and Commercial Invoices being different, the Applicant submitted that in the present case, the export goods, being Pharmaceutical Product, necessary clearances (NOC) is required to be obtained from the Assistant Drug Controller, having office at Port of Export or ICD. , who had then verified all the Export Documents i.e. Description of export goods and Batch No. with Product Permission with Commercial Export Invoice and other export documents and endorsed the same by allotting Number in Commercial invoice and this number also fed in EDI System of the

Customs. Further, the Central Excise Invoices and ARE-1s show the 'Brand Names' as description of the Pharmaceutical Product/ goods, whereas the Commercial Invoices and Shipping Bill show the 'Generic Name' and also its composition of the Pharmaceutical Product/goods. Government finds that the Brand names/Generic names belong to the same respective medicines. Further, the Pharmaceutical Product/Medicines had been manufactured and exported with the necessary permission/NOC from the Commissioner, Food & Drugs Control Administration, Gandhinagar, Gujarat State. Thus Government finds that the deficiencies observed by the original adjudicating authority and by the first appellate authority are of procedural or technical nature and the same deserves leniency.

8. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. 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 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.

9. In view of the foregoing, the Government holds that detail verification of the rebate by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE 1 as produced by the Applicant in their rebate claim, has to be taken into consideration. The Applicant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

10. In view of above discussions and findings, Government set aside the impugned Order-in-Appeal No DMN-EXCUS-000-APP-147-14-15 dated 01.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law.

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

12. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 573/2020-CX (WZ)/ASRA/Mumbai DATED 10·08·2020.

To,

M/s Stallion Laboratories Pvt. Ltd.,
8th floor, Behind Lal Bunglow,
Off C.G. Road,
Ahmedabad-380 006

ATTESTED

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

Copy to:

1. The Commissioner of CGST, Ahmedabad North, Customs House, 1st floor, Navrangpura, Ahmedabad – 380 009.
2. The Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman
3. The Deputy / Assistant Commissioner, GST & CX , Division Vapi-I, Daman Commissionerte.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file