

REGISTERED
SPEED POST



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.198/97/2013-RA / 5426
F.No.198/03/2014-RA

Date of Issue: 15.09.2020

ORDER NO. ³⁸⁶⁻⁵⁸⁷ /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 : Commissioner of Central Excise & Service Tax, LTU, Mumbai

Respondents : M/s Glenmark Pharmaceuticals Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise
Act, 1944 against the Orders-in-Appeal Nos BPS/91-
160/LTU/MUM/2012 dated 27.06.2013 and
BPS/272/LTU/MUM/2013 dated 23.09.2013 passed by the
Commissioner (Appeals), Central Excise, Customs & Service Tax,
LTU, Mumbai



ORDER

These two Revision Applications are filed by the Commissioner, Central Excise, Customs & Service Tax, LTU, Mumbai (hereinafter referred to as "the Applicant") against Orders-in-Appeal Nos BPS/91-160/LTU/MUM/2012 dated 27.06.2013 and BPS/272/LTU/MUM/2013 dated 23.09.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai.

2. The issue in brief is that the Respondent, M/s Glenmark Pharmaceuticals Ltd. are engaged in the manufacture of Pharmaceutical Products falling under Chapter 30 of the Central Excise Tariff Act, 1985 having Central Excise Registration under LTU, Mumbai. Most of the goods manufactured and cleared by them are exported on payment of duty. Subsequently, they filed rebate claims thereon, in terms of the Notification No. 19/2004 C.E.(N.T.) dated 06.09.2004; issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 in respect of the excise goods exported on payment of duty against various ARE 1s. On receipt of subject rebate claims, the respondent was issued "Deficiency Memos" regarding clarification as to why the rebate claims pertaining to goods cleared after a period of six months from their factory clearances should not be rejected. After receiving the clarification from the claimant, the Deputy Commissioner, LTU, Mumbai passed the Orders-in-Original, sanctioning the rebate claims partly and rejecting the balance rebate claims of Rs. 14,63,713/- and Rs. 7,20,161/- respectively.

3. Being aggrieved, the respondent filed appeal before the Commissioner (Appeals), LTU Mumbai. The Commissioner (Appeals), LTU Mumbai vide impugned Orders-in-Appeal Nos BPS/91-160/LTU/MUM/2012 dated 27.06.2013 and BPS/272/LTU/MUM/2013 dated 23.09.2013 allowed the appeal filed by the respondent with all consequential relief stating that the issue involved in the subject appeals has already been dealt with in details while deciding the Respondent's earlier appeals decided by him vide Orders-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012, BPS/62-81/LTU/MUM/2013 dated



16.05.2013 and BPS/91-160/LTU/MUM/2013 dated 27.06.2013 and held that the Adjudicating Authority ought to have allowed in impugned Orders-in-Originals as the same could not have been denied to them for minor procedural infractions and held that these rebate claims are admissible to them and it may be sanctioned forthwith subject to verification of relevant export documents along with interest under Section 11BB ibid.

4. Being aggrieved, the Department filed aforementioned Revision Application against the impugned Order in Appeal on following grounds:

- (i) The Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims. The rebate sanctioning authority disallowed the rebate amount of duty the details as shown in Para 2 above. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in the impugned order by the Commissioner(Appeals) that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory. Under Rule 18 of the Central Excise Rules, 2002, the Central Government has issued a Notification No. 19/2004-CE (NT) dated 06.09.2004³ prescribing the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that, the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. Thus his mandatory requirement is not fulfilled by the claimant.
- (ii) The Respondent has failed to fulfill the condition by not getting the required permission from the jurisdictional Commissioner of Central Excise for exporting the goods beyond a period of six month, hence the order passed by the adjudicating authority rejecting rebate claims to that extent is correct as this is a substantial/ mandatory requirement.



(iii) That the said Orders-in-Appeal allowing amount of rebate claims amounting to Rs. 1,46,36,713/- and Rs. 7,20,161/- respectively relating to their excisable goods on account of delay in export of goods beyond six months period from the date of removal of the excisable goods from the factory, be set aside and suitable orders may issued considering the above submissions.

5. A personal hearing in the case was held on 14.01.2020. No one was present from the Applicant Department. Shri Mangesh Chaudhary, Manager appeared on behalf of the Respondent. The Respondent reiterated their earlier submissions.

6. The Respondent in their written submissions filed on the date of hearing have defended the Commissioner(Appeals) Order on following grounds:

- (i) Both Notification No. 19/2004-CE (NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules, 2002 and Notification No. 42/2001-CE (NT) dated 26.06.2001 read with Rule 19 of Central Excise Rules, 2002, 2002 prescribed six month period of exportation of goods. The Rules 18 & 19 of Central Excise Rules, 2002 are pari materia with erstwhile Rules 12 & 13 of Central Excise Rules, 2002, 1994. The Department in their present Appeal at Para II has averred that the Supreme Court's decision in the case of JIPCL Vs Collector is not applicable in the instant case as it refers to interpretation of Rule 12 & 13 of CER, 2002. Such averment as made by the Department is totally fallacious and cannot be accepted accordingly. The cases which are most pertinent to the present issue on hand have been decided by different Benches of Tribunal and the same are binding on the assessee as well as on Department Officials too.
- (ii) They rely upon a decision of Kosmos Healthcare Pvt. Ltd [2013(297) ELT 346 (Cal.)] wherein no extension of time for exportation was made by the assessee and for this reason alone, the Commissioner has granted them the rebate of duty.
- (iii) It is the intention of the Government not to export taxes. In fact, in th case of Repro Ltd Vs UOI [2009 (235) ELT 614 (BOM)], the Hon'ble Bombay High



court had an occasion to decide on the issue of exportation of taxes and emphasized on the consistency in policy of the Central Government not to export taxes but only to export good.

- (iv) Rejection of rebate claim is not sustainable as the State cannot enrich unjustly and as a result they prayed that the refund be granted.

7. 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.

8. On perusal of records, it is noted that the Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims and the rebate sanctioning authority disallowed the rebate amount of duty. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in the findings of impugned orders by the Commissioner(Appeals) that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory.

9. Government observes that the Commissioner(Appeals) has allowed the rebate of central excise duty paid on goods which have not been exported within six months of their clearance from the factory on the ground that there was no dispute about the duty paid nature of the goods, that the respondent could not be deprived of substantive benefits for minor procedural infractions, that there was substantial compliance. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the present case, the Respondent has not made any such effort.

10 However, there has been failure on the part of an established manufacturer which cannot be justified. The Respondent has exhibited utter disdain for the



procedures laid down. The judgments relied upon by the Commissioner(Appeals) are not on the specific issue involved in these proceedings and are therefore distinguishable. It is observed that in the written submissions filed by the respondent at the time of personal hearing, they have placed reliance upon the judgment of the Hon'ble High Court of Calcutta in the case of Kosmos Healthcare Pvt. Ltd. vs. Assistant Commissioner of Central Excise, Kolkata-I[2013(297)ELT 345(Cal)]. However, the Hon'ble Bombay High Court has in the case of Cadila Healthcare Ltd. vs. UOI[2015(320)ELT 287(Bom)] while interpreting the amplitude of condition 2(b) held that the Maritime Commissioner(Rebate) had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief. The judgment of the Hon'ble Bombay High Court being a judgment rendered by the jurisdictional High Court is binding and therefore the order of the Commissioner(Appeals) allowing the rebate in respect of exports which were not effected within six months from the date of clearance of goods from the factory cannot sustain.

11. Government also relies on GOI Order No. 390/2013-CX. dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

"Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004 C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order in Original."



12. In view of the above discussions and findings, Government sets aside the Orders-in-Appeal Nos BPS/91-160/LTU/MUM/2012 dated 27.06.2013 and BPS/272/LTU/MUM/2013 dated 23.09.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai and restores the impugned Orders-in-Original.

13. Revision Applications are allowed in terms of above.

14. So ordered.

(SEEMA ARORA)

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

ORDER No. ⁵⁸⁶⁻⁵⁸⁷ /2020-CX (WZ)/ASRA/Mumbai DATED 08.2020.

To,

M/s Glenmark Pharamaceuticals Ltd.,
Glenmark House, B.D. Sawant Marg,
Andheri (East),
Mumbai 400 099.

1. The Commissioner of GST & CX, Mumbai East Commissionerate.
9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. The Commissioner, Central Excise, (Appeals-II) Mumbai, 3rd Floor, GST Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, Division-III, GST & CX, Mumbai-East Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.

ATTESTED

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

