

**REGISTERED  
SPEED POST**



**F.No. 195/739-740/11-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...18 01/13

ORDER NO. 61-62/13-Cx DATED 18-01-2013 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.  
IND/CE/000/APP/198 & 199/2011 dated 24-05-2011  
passed by Commissioner of Central Excise,  
(Appeals), Indore

APPLICANT : M/s Symbiotec Pharmalab Ltd.,  
Indore (MP).

RESPONDENT : Commissioner of Central Excise,  
Indore.

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ORDER

These revision applications are filed by M/s Symbiotec Pharmalab Ltd., Indore (MP) against the Order-in-Appeal No. IND/CE/000/APP/198 & 199/2011 dated 24-05-2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Division, Indore.

2. Brief facts of the case are that the applicant supplied goods to a SEZ Unit namely M/s Symbiotec Pharmalab Ltd., SEZ Pithampur, Indore under rebate claim. Supplies to SEZ Units are treated as export and rebate under Rule 18 of the Central Excise Rules, 2002 on such supplies is admissible as per Board's Circular No. 29/2006-Cus dt. 27-12-2006 and circular No. 06/2010 dt. 19-03-2006. The adjudicating authority after scrutiny of the rebate claims, issued impugned Orders-in-Original sanctioning the rebate claims of the Central Excise duty paid but rejected the rebate claim w.r.t. special Additional duty claimed to have been paid.

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

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

4.1 Commissioner (Appeals) has failed to observe that the Assistant Commissioner has rejected part rebate w.r.t. payment of Additional Duty, without offering an opportunity to the applicant to explain the position. This course of action is in defiance to the CBEC Supplementary Instruction as at para 8.4 of chapter-8.

4.2 The Commissioner (Appeals) has misconceived the provision in notification No. 19/2004-CE (NT) dt. 06-09-2004 applicable for granting rebate under Rule 18 of the Central Excise Rules, 2002, in terms of Boards Circular dt. 27-12-2006, ibid and Circular dated 19-03-2010, ibid, when supplies are made from DTA to SEZ. The

relevant portion of para-1 of notification No. 19/2004-CE (NT) is reproduced below for ease of reference.

*" ..... the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the first schedule, exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter. "*

In view of above provisions, it is absolutely clear that the clearances are liable to duty includes special Additional duty and the same is liable to be refunded to the applicant.

4.3 The Commissioner (Appeals) has failed to notice from the relevant Order-in-Original that the Assistant Commissioner, although have contended that the attested copy of RG 23A Part-II is showing that duty has been paid from Cenvat account, but he relied upon the report dt. 20-10-2010 of the Range officer and held that relevant invoices do not indicate that additional duty has been paid, and the rebate is admissible to the extent duty is paid/payable. This opinion has been generated without proper examination of the relevant invoices accompanying the claim.

4.4 In order to resolve the dispute to the effect that the payment of additional duty has actually been made, the applicant has prepared a statement showing the reference under which the said additional duty has been paid. The cenvat account will also reflect the actual payment of additional duty.

4.5 The applicant has relied upon following case laws in favour of

- a) Adarsh Metal Corporation Vs. UOI reported in 1993 (67) ELT 483 (Raj.)
- B) Hon'ble CESTAT (Mumbai) in the case of Bharat Chemicals Vs. Commissioner of Central Excise, Thane-reported in 2004 (170) ELT 568 (Tri.Mum)
- C) 2008 (12) STR 788 (Tri. Bang.) Binjrajka Steel Tubes Ltd. Vs. Commissioner of Central Excise, Hyderabad.

5. Personal hearing scheduled in this case on 07-12-2012 was attended by Shri Ramesh Nair, advocate on behalf of the applicant who reiterated the grounds of

Revision Application. Nobody attended hearing on behalf of the respondent department.

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

7. Government observes that the original authority sanctioned the rebate claims of Central Excise duty paid on goods cleared to SEZ and rejected the part rebate claims pertaining to special Additional duty paid on such clearances. Commissioner (Appeals) observed that though the applicant has paid 4% of additional duty, the same does not belong to category of list of duties mentioned in explanation (I) of the Notification No. 19/2004-CE (NT) and also they were not liable to pay said duty in respect of exports made to SEZ. Accordingly, Commissioner (Appeals) uphold impugned Orders-in-Original. Now, applicant has filed these revision applications on grounds mentioned in para (4).

8. Government notes that Commissioner (Appeals) in para 6 of his order dated 24-05-2011 has observed as under:-

*" From above, it is clear that four percent additional duty paid by the applicant does not belong to any of the duties of excise, specified in the Explanation I to the Notification No. 19/2004-CE (NT) as no additional duty of excise is payable on the goods in question which were cleared to a unit located at SEZ, Pithampur and from the records of the case, it is not clear that why the applicant have paid this duty, because as per existing Central Excise provision at the relevant time this four percent duty was not at all payable on the clearance of excisable goods by them. Four percent additional customs duty is payable under section 3(5) of the Customs Tariff Act, 1975 on the import of goods. "*

Government observes that the said duty was not found payable on said clearances and therefore it cannot be treated as duty paid. Moreover, the additional Customs duty is payable under section 3 (5) of Customs Tariff Act, 1975 on the import of goods and not on export of goods. This observation of Commissioner

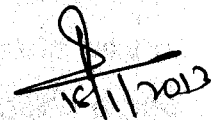


Order No.6/-62/13-Cx dated 18-01-2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.
2. The Commissioner (Appeals-I), Customs and Central Excise, 4, Inderlok Colony, Kesar Bagh Road, Indore (MP).
3. The Asstt. Commissioner of Central Excise, Division-Indore.
4. Shri Ramesh Nair & Co., Lakshmivihar, AG-192, Schemem No. 54, Vijayanagar, Indore.
5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)