

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.195/ 80/2013-RA,
195/861/2013-RA, /5269
195/919/2013-RA

Date of Issue: 05.10.2020

ORDER NO. 620 - 622 /2020-CX /ASRA/MUMBAI DATED 11.09.2020 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.

Sl.No.	Revision Application No.	Applicant	Respondent
1.	195/80/2013-RA	M/s Sigma Laboratories, Wadala, Mumbai	Commissioner, Central Excise, Raigad
2.	195/861/2013-RA	M/s Sigma Laboratories, Wadala, Mumbai	Commissioner, Central Excise, Raigad
3.	195/919/2013-RA	M/s Sigma Laboratories, Wadala, Mumbai	Commissioner, Central Excise, Raigad

Subject :Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders in Appeal No. US/664/RGD/2012 dtd. 16.10.2012 passed by Commissioner, Central Excise (Appeals), Mumbai-II, US/212/RGD/2013 dtd. 29.07.2013 passed by Commissioner, Central Excise (Appeals), Mumbai-II and SDK/150/RGD(R)/2013-14 dated 04.09.2013, passed by Commissioner, Central Excise (Appeals), Mumbai- III respectively.

ORDER

These Revision applications are filed by Sigma Laboratories Ltd., Mumbai (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below passed by Commissioner (Appeals) of Central Excise Mumbai II and Mumbai-III.

TABLE

Sl. No.	Revision Application No.	Order-In-Appeal No.	Order- In-Original No.
1.	195/80/2013-RA	US/664/RGD/2012 dtd. 16.10.2012	1821/11-12/DC (Rebate)/Raigad dated 16.01.2012
2.	195/861/2013-RA	US/212/RGD/2013 dtd. 29.07.2013	Raigad/ADC/140/SJ/12-13 dated 28.02.2013
3.	195/57/2015-RA	SDK/150/RGD(R)/2013-14 dated 04.09.2013	3314/12-13/(DC)(Rebate)/ Raigad dated 29.03.2013

2. The brief facts of the cases are that the applicant had filed 2 rebate claims totally amounting to Rs. Rs.1,19,135/- (Rupees One Lakh Nineteen Thousand One Hundred Thirty Five only) under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 before the Deputy Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority sanctioned the said Rebate claims vide Order- In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012. The Commissioner, Central Excise, Raigad, reviewed the Order in Original under the provisions of Section 35E(2) of the Central Excise Act,1944 and directed Deputy Commissioner to file appeal against the said Order in Original on the sole ground that there is no self sealing certificate on ARE-1s as required in para 3(a) (xi) of Notification No.19/2014 CE dated 06.09.2004. Commissioner, Central Excise (Appeals), Mumbai-II vide Order in Appeal No. US/664/RGD/2012 dtd. 16.10.2012 allowed the Appeal filed by the Department and set aside Order-In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012 sanctioning rebate claim. Being aggrieved by the said Order in Appeal, the applicant filed **Revision Application No. 195/80/2013-RA (Sl. No. 1 above of Table at para 1)** on the grounds mentioned therein.

3. Subsequent to setting aside Order- In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012 sanctioning rebate of Rs.1,19,335/- vide OIA US/664/ RGD/ 2012 dtd. 16.10.2012, protective demand was issued to applicant which was confirmed alongwith interest by the Additional Commissioner, Central Excise, Raigad vide Order- In-Original No. Raigad/ADC/140/SJ/12-13 dated 28.02.2013. On appeal being filed by the applicant against the said Order in Original, Commissioner, Central Excise (Appeals), Mumbai-II vide Order in Appeal No. US/212/RGD/2013 dtd. 29.07.2013 upheld the Order in Original No. Raigad/ADC/140/SJ/12-13 dated 28.02.2013 and rejected the appeal filed by the applicant. Being aggrieved by the said Order in Appeal, the applicant filed **Revision Application No. 195/861/2013-RA (Sl. No. 2 above of Table at para 1)** on the grounds mentioned therein.

4. The applicant had filed 12 rebate claims amounting to Rs,11,90,656/- (Rupees Eleven Lakh Ninety Thousand Six Hundred Fifty Six only) under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 before the Deputy Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority sanctioned the said Rebate claims vide Order- In-Original No. 3314/12-13/DC (Rebate)/Raigad, dated 29.03.2013. However, while disbursing the net amount of refund, the rebate sanctioning authority appropriated confirmed demand of Rs.1,44,986/- (Amount of Rs.1,19,135/- towards erroneous rebate sanctioned mentioned at Sl. No. 3 above + interest of Rs.25,851/- thereon till 31.03.2013). Aggrieved by the said appropriation, the applicant filed appeal before Commissioner, Central Excise (Appeals), Mumbai- III who vide Order in Appeal No. SDK/150/RGD(R)/2013-14 dated 04.09.2013 held that dues to the Central Excise Department can be appropriated against rebate or refund payable to the applicant and accordingly upheld the Order in Original No. 3314/12-13/DC (Rebate)/Raigad, dated 29.03.2013 and rejected the appeal filed by the applicant. Being aggrieved by the said Order in Appeal, the applicant filed **Revision Application No. 195/919/2013-RA (Sl. No. 3 above of Table at para 1)** on the grounds mentioned therein.

5. A Personal hearing in these cases was scheduled on 21.08.2019 (in r/o RA No. 195/80/2013), 22.08.2019 (in r/o RA No.195/861/2013), 11.12.2019 and 14.01.2020 (in r/o RA No.195/919/2013). Shri N.S. Patel, Advocate, duly

authorized by the applicant appeared for hearing scheduled on 14.01.2020. None appeared on behalf of the respondent department. The Advocate for applicant reiterated the grounds of Revision Applications and requested to link all these 3 Revision Applications on same issue for decision. He also submitted that they would be making fresh written submissions again shortly and requested for a time. Thereafter, the applicant made written submissions dated 22.01.2020

6. In their written submissions dated 22.01.2020 the applicant mainly contended as under :-

- The present Revision Application (RA No.195/919/2013), they submit that impugned O.I.A dated 04-09-2013 passed by the Commissioner of Central Excise (Appeals) did not consider at all the submissions by them, therefore, order of the Commissioner (Appeals) deserves to be set aside.
- In Paragraph 7 of his impugned Order in Appeal the Commissioner (Appeals) referred to Chapter 18 of the Central Board of Excise and Customs' Central Excise Manual and says that whenever Government dues are not paid the law provides the recovery thereof under Section 11 A of the Act. These provisions are cited out of context. The present case, the applications have been already filed earlier 2 Revision Applications against the Commissioner (Appeals) orders and also stay applications. These are pending before the Hon. Joint Secretary (RA) New Delhi. In such situation, it can not be said that Amount of rebate claim already sanctioned and paid to them after due scrutiny of their rebate claims was wrongly sanctioned. Therefore, it cannot be said that these are arrears of revenue attracting the provisions of Section 11 A of the Act as wrongly held by the Commissioner (Appeals). It is to be appreciated the proceedings have not reached finality. It will reach finality only when Hon'ble Joint Secretary (R.A.) decides the applicant's Revision applications. Thus, the action of the Commissioner (Appeals) in rejecting the appeal of the applicant is bad in law. He has not applied his mind to the facts as well as on the subject. They had submitted two case laws on the subject.

c) First: In Applicant's own case:-

In that case, the Commissioner, Central Excise(Appeals) Mumbai- II by his ORDER IN APPEAL No YDP/410/RGD/2011 Dated 08-04-2011 had held that non furnishing of certificate of Sealing by the Director or Company Secretary etc, in the body of ARE-I is procedural and technical mistake. He also observed that Bank Realization Certificate was also produced. In these circumstances , the rebate claims cannot be denied on the technical ground The order of the Commissioner (Appeals) was not appealed against against and has become final. The Commissioner (Appeals) should have followed the

ratio of the order as a matter of judicial discipline Law is well settled on this point.

In the Second Case:

They had also produced a copy of another Order In Appeal No 451-456/RGD/2010 dated 30-07-2010 disposing 6 appeals by one order wherein he had taken similar view. The Order in Appeals is also not taken up in revision by the revenue and therefore, it has become final.

- The Commissioner (Appeals) should have followed the ratio of both the orders. By cryptic remark, he holds in his order that ratio of the order of the Commissioner (Appeals) pertains to non- appearance of self - sealing certificate on ARE-1 and same is not applicable in this case. The Commissioner (Appeals) has failed to appreciate that the Order In Original challenged before him was passed appropriating already sanctioned rebate claim with interest and that it had nexus to the Commissioner (Appeals) Order in Appeal and also the Additional Commissioner of C. Excise Raigad-Commissionerate's Order in Original wherein they held that rebate is not admissible because there is self- sealing certificate not appearing in ARE-1. Thus it is to be appreciated that what is appropriated by the Deputy Commissioner is not arrears of the revenue and the matter is yet to reach finality. In Such situation, Orders of the both lower authorities deserve to be set aside. Since Law is settled on this points, in support they rely upon Hon'ble Supreme Court's decision reported in 1994 (73) E.L.T. 73 762 (S.C.)
- It is submitted that in all there are 3 revision applications filed by them on the similar issue, viz. 195/80/2013 and; 195/861/2013 and 195/919/2013 may be linked.

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 pertaining to all these three Revision Applications. Since the issues involved in Revision Applications Nos. 195/861/2013 and 195/919/2013 are offshoot of issues in dispute in Revision Application No.195/80/2013, common and interconnected, they are taken up together and are disposed of vide this common order.

8. Government first takes up Revision Applications at **Sl. No. 1 of Table at para 1**, viz. bearing No. **195/80/13-RA** (arising out of Order in Appeal No. **US/664/RGD/2012 dtd. 16.10.2012**).

9. Government in the instant case notes that the applicant had filed two rebate claims altogether amounting to Rs.1,19,335/- before the Deputy

Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority sanctioned the said Rebate claims vide Order- In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012. The Commissioner, Central Excise Raigad, reviewed the Order in Original under the provisions of Section 35E(2) of the Central Excise Act,1944 and directed Deputy Commissioner to file appeal against the said Order in Original on the ground that there is no self sealing certificate on ARE-1s as required in para 3(a) (xi) of Notification No.19/2014 CE dated 06.09.2004. Commissioner, Central Excise (Appeals), Mumbai-II vide Order in Appeal No. US/664/RGD/2012 dtd. 16.10.2012 allowed the Appeal filed by the Department and set aside Order- In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012 sanctioning rebate claim.

10. From the Order in Appeal No. US/664/RGD/2012 dtd. 16.10.2012 it is observed that the only contention of the Department in the appeal Memorandum was that there was no self sealing certificate on the ARE-1s as required under para 3(a) (xi) of Notification No.19/2014 CE dated 06.09.2004. Commissioner (Appeals) allowed the appeal filed by the department on two counts; one, is that procedure laid down in para 3(a) (xi) of Notification No.19/2014 CE dated 06.09.2004 is mandatory provision which is not followed by the applicant and secondly that goods in respect of all the ARE-1s under present rebate claims were not opened by the Customs and therefore identity of goods exported was not established.

11. Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure, discussed supra, has been prescribed to identify and correlate export goods at the place of dispatch. Government notes that in the instant case the impugned goods were cleared from the factory without sealing either by Central Excise officers or without bearing certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Export

oriented schemes like rebate/drawback are not deniable by merely on technical interpretation of procedures, etc.

12. The applicant has also relied upon Order in Appeal No. YDB/451 to 456 / RGD/2010 dated 30.07.2010 passed by Commissioner, Central Excise (Appeals), Mumbai-II wherein while deciding the similar issue in favour of the exporter, the Commissioner (Appeals) has relied upon GOI Order No.1231/2010-CX dated 21.07.2010 in RE:Mahajan Silk Mills. GOI in the said Order had observed that

“Government further observes that the appellant has not given self certification on ARE-1. This can only be a procedural lapse especially in those cases where there is sufficient proof of export of the duty paid goods by way of proper endorsement of Central Excise and Customs Officers on the relevant documents and amount has also been realized vide BRC submitted by the applicant to the rebate sanctioning authority”.

Moreover, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer, even in cases in terms of Board Circular No.294/10/97-Cx dated 30.01.1997, may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse and sufficient corroborative evidence found to correlate exported goods with goods cleared under Excise documents. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd.

13. It is pertinent to note that in Order in Original No. 1821/11-12/DC (Rebate)/Raigad dated 16.01.2012 the rebate sanctioning authority while sanctioning rebate claims of Rs.1,19,135/- has observed as under:-

5. The description and quantity of the goods as mentioned in the ARE-1 vis-a-vis to Shipping Bill and Bill of Lading tallies and are in order

6. The triplicate copy of ARE-1 carries the endorsement of Excise officer in Part A that the export clearance is recorded in Daily Stock Register.

7. The duty payments has been ascertained from the Invoice and from the endorsement on ARE-1 Part A by Supdt., In-charge of manufacturing unit.

8. *The Export goods covered by the ARE-1s have been certified as exported by Customs Officer in Part-B of Original & Duplicate ARE-1s the said aspect is also supported by Bills of lading and Shipping Bills.*

9. *The market price as declared in the ARE-I / Invoice is seen to be more than the rebate claimed.*

10. *Necessary Disclaimer Certificate produced by the claimant*

11. *As per Instruction No.01 & 2 dated 12.06.2006 & 14.06..2006 of Commissioner regarding verifications to be carried out in case of merchant / manufacturer exporters, the verifications were accordingly carried out Also followed the instruction No 01/2008 dated 27.10.2008 and Instruction No.02/2008 dated 26.12 2008 issued by the Commissioner, Central Excise, Raigad. The Shipping Bill data have been obtained from website i.e. www.icegate.gov.in and the same found in order. The Supdt. C. Ex., Range-1, Division- Boisar-I, Thane-II vide letter F. No tCEX/R-I/BSR-1/Ciron/Rebate-Raigad/2011-12/559 dated 28/12/2011 has confirmed the verification of duty payments. The same also has been confirmed over telephone.*

12. *The claimant have produced BRC in respect of above mentioned shipping bills and on verification same found in order.*

13. *In view of the above it has proved that ,*

(i) The rebate claim was submitted within time

(ii) The goods in question have been exported.

14. From the aforesaid findings of the rebate sanctioning authority, Government observes that there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation. Moreover, the applicant has also submitted BRC towards the goods exported.

15. In view of above submitted factual details and totality of all other submissions of the applicant herein, Government finds that the applicant is eligible for rebate in the manner it was granted by the original rebate sanctioning authority. As such the Order-in-Appeal No. US/664/RGD/2012 dtd. 16.10.2012 passed by Commissioner, Central Excise (Appeals),

Mumbai-II setting aside the Order in original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012, cannot sustain.

16. With regard to Revision Application at **Sl. No. 2 of Table at para 1**, viz. bearing **No. 195/861/13-RA** (arising out of Order in Appeal **No. US/212/RGD/2013 dtd. 29.07.2013**), it is noted that this Revision Application is due to results of issue and confirmation of show cause cum demand notice dated 19.10.2012 (confirmed vide OIO No. Raigad/ADC/140/ SJ/ 12-13 dated 28.02.2013) which was issued after the respondent department reviewed and held the above rebate claims of Rs. 1,19,135/- as erroneously sanctioned. Now, since the said rebate claims of Rs.1,19,135/- are held admissible and rightly sanctioned, the demand confirmed vide Order in Original No. Raigad /ADC/140/SJ/12-13 dated 28.02.2013, passed by Additional Commissioner, Raigad and impugned Order-in-Appeal No. US/212/RGD/2013 dtd. 29.07.2013 upholding the same are also not sustainable.

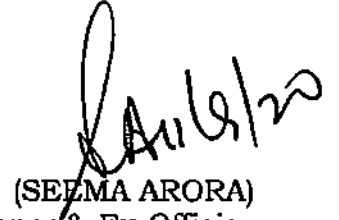
17. Government now takes up Revision Application at **Sl. No. 3 of Table at para 1**, viz. bearing **No. 195/919/13-RA** (arising out of Order in Appeal **No. SDK/150/RGD(R)/2013-14 dated 04.09.2013**). In this case the Commissioner (Appeals) had upheld appropriation of confirmed demand of erroneously sanctioned refund of Rs.1,19,135/- alongwith interest of Rs.25,851/-. It has already been held in foregoing para that Order-In-Appeal No. US/212/RGD/2013 dtd. 29.07.2013 which has upheld Order in Original NO. Raigad/ADC/140/SJ/12-13 dated 28.02.2013, passed by Additional Commissioner, Raigad confirming demand of Rs.1,19,135/- alongwith interest does not legally sustain. As a consequence, further recovery proceedings initiated vide Order in Original No. 3314/12-13/(DC)(Rebate)/Raigad dated 29.03.2013 by appropriating arrears to the tune of Rs.144,986/- (Sanctioned Rebate of Rs.1,19,135/- + interest of Rs.25,851/-) and upholding of the said Order in Original vide Order in Appeal No. SDK/150/RGD(R)/2013-14 dated 04.09.2013 also do not legally sustain.

18. In view of above circumstances, Government sets aside the Orders-in-Appeal No. US/664/RGD/2012 dtd. 16.10.2012, US/212/RGD/2013 dtd. 29.07.2013

passed by Commissioner, Central Excise (Appeals), Mumbai-II and SDK/150/RGD(R)/2013-14 dated 04.09.2013, passed by Commissioner, Central Excise (Appeals), Mumbai- III and restores the Order- In-Original No. 1821/11-12/DC (Rebate)/Raigad, dated 16.01.2012 passed by Deputy Commissioner (Rebate), Central Excise, Raigad.

19. The Revision Applications No. 195/80/2013-RA, 195/861/2013-RA and 195/919/2013 succeed in the above terms..

20. So, ordered.



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

ORDER No. ⁶²⁰⁻⁶²² /2020-CX (WZ) /ASRA/Mumbai Dated 11/09/2020.

To,

M/s Sigma Laboratories,
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R.A. Kidwai Road, Wadala,
Mumbai - 400 031

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate., 1st Floor, CGO Complex, Cbd Belapur, Navi Mumbai-400614
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur , CGO Complex, Cbd Belapur, Navi Mumbai-400614
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.