



REGISTERED
SPEED POST

F. No. 195/779-781/2012-RA(CX)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6TH FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI – 110 066.

Date of Issue... 24/5/16

ORDER NO. 63-65/2016-CX DATED 19.05.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. YDB/57 to 59/LTU/MUM/12 dated 31.05.2012 passed by Commissioner of Central Excise (Appeals), LTU, Mumbai.

Applicant : M/s Glenmark Pharmaceuticals Ltd., Mumbai.

Respondent : Commissioner of Central Excise, LTU, Mumbai.

ORDER

These Revision Applications are filed by M/s Glenmark Pharmaceuticals Ltd., Mumbai against the Orders-in-Appeal No. YDB/57 to 59/LTU/MUM/12 dated 31.05.2012 passed by the Commissioner of Central Excise (Appeals), LTU, Mumbai with respect to Orders-in-Original No. LTU/MUM/CX/GLT-4/R-139/2011 dated 25.08.2011, No. LTU/MUM/CX/GLT-4/R-173/2011 dated 11.10.2011 and No. LTU/MUM/CX/GLT-4/R-172/2011 dated 12.10.2011, passed by the Deputy Commissioner of Central Excise & Service Tax, LTU, Mumbai.

2. Brief facts of the case are that the applicants filed rebate claims good cleared for export under Rule 18 of the Central Excise Rules, 2002. The original authority rejected the rebate claims against certain ARE-1s on the ground that the goods were exported after six months from the date of clearance of goods from factory in violation to permission of Notification No.19/2004-CE(NT) dated 06.09.2004.

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

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

4.1 That the Deputy Commissioner has neither distinguished nor analysed the cases cited and relied by the applicant while replying to deficiency memo dated 08.04.2011 by their letter dated 15.04.2011 which is already marked as Annexure-B. The applicant hereby rely on the submissions made in their reply dated 15.04.2011 and the same to be considered as part and parcel of this present Appeal. The applicant in their letter dated 15.04.2011 relied upon following case laws:

- In the case of Commissioner of Central Excise, Kolkata-I vs. Rahul Computex Pvt. Ltd. as reported at 2007 (208) ELT 296, the Tribunal Bench rejecting the Appeal by Department, held that, "*goods exported without payment of duty under ARE-I, exported after expiry of stipulated period of six months/extended period and Bond executed for due export of goods cannot be acted upon as a legal instrument for recovery of duty on excisable goods exported after expiry of stipulated period/extended period. No infirmity in impugned order dropping demand.*"
- Again in the case of Commissioner of Central Excise, Kolkata-I vs. Krishna Traders as reported in 2007 (216) ELT 379. The Tribunal Bench held that, "The Id. Commissioner (Appeal) has passed a very reasoned order holding that there was no Revenue implication since the goods meant for export were exported. For Revenue neutrality, the matter does not need to be dilated further. The said authority also was of the

view that when the export itself was not dutiable under Excise Law, delayed export if not permitted, that will frustrate the object of export. Therefore, he rightly allowed the appeal of the Respondent without any disputed fact on record as to export. But while allowing the appeal he also imposed penalty of Rs.2,000/- (Rupees two thousand only) which was unwarranted when no mala fide intention to evade revenue was found by the learned Commissioner (Appeals). Revenue's appeal is therefore dismissed" In the present case, the goods have been exported after a period of six months of its clearance from the factory premises and in fact in most of the cases approximately the delay has been for a period of two months only.

- Even in the case of Modern Process Printers reported in 2006 (204) ELT 632 (GOI) held that the rebate/drawback and other such export promotion schemes of Government, are incentive oriented beneficial schemes intended to the goods export in order to promote export and to earn more foreign exchange for the country. In case substantive fact of export is not in doubt, a liberal interpretation is to be accorded in case of technical lapses, if any, in order to defeat the very purpose of such schemes.

4.2 That substantial compliance has been made by the applicant while exporting the goods as well all the documents confirm that the goods were exported and there is no such denial from the Department. The procedural lapse, in not obtaining necessary permission from the Jurisdictional Authorities for extension, should have been condoned by the Deputy Commissioner as well later on by the Respondent.

4.3 That the provision of extension of stipulated time period of exportation of goods cleared for exportation without payment of duty is available and the same is also available for exportation under rebate of duty in the Notification No.42/2001-C.E.(NT) dated 20.06.2001 as amended as well as under condition 2.1(i) and 3.5 of Chapter 7 of CBEC's manual of supplementary instruction.

4.4 That consequently, the cases cited by the applicant in their reply dated 15.04.2011 when applicable to goods cleared for exportation without payment of duty can also be made relevant to the goods cleared under rebate of duty for exportation. In none of the cases as cited and relied by the applicant, the assesses had sought permission for extension of stipulated time limit to export their goods. Therefore, the cases as relied by the Appellants are also applicable in the present issue.

4.5 That it is the intention of the Government not to export taxes. In fact, in the case of *Repro India Ltd. vs Union of India*, 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 goods.

5. Personal Hearing was held in this case on 16.12.2015 which was attended by Shri R.K. Sharma, advocate and Shri Aman Leekha, Advocate on behalf of the applicant. The applicant placed reliance upon order of Hon'ble Kolkata High Court

in the case of Kosmos Healthcare Pvt. Ltd vs. Assistant Commissioner, Kolkata – I, reported as 2013 (297) ELT 347 (Cal.). Where facts of the case are identical and it is held that a liberal approach will have to be taken except in cases where delay is unexplained and there is loss of revenue. The Department vide this written submission dated 22.12.2015 mainly relied upon contents of impugned orders.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant's rebate claims under Rule 18 of the Central Excise Rules, 2002 were rejected on the ground that against certain ARE-1s the goods were exported after six months from date of clearance for export from factory in violation of condition 2(h) of Notification No.19/2004-CE(NT) dated 06.09.2004. Commissioner (Appeals) upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para 4 above.

8. Government notes that the condition no. 2(h) of the Notification No.19/2004-CE(ND) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 reads as under:

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow"

As per the said provision, the goods are to be exported within six months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In the present case, such an extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have they placed on record any extension of time limit permitted by competent authority. The said condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.

9. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd – 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

10. Government has gone through the pleading of the applicants for condonation of the above act of omission/commission because the same is of simple procedural category. However, the point which needs to be emphasized is that when the Applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 *ibid*, the Applicant should have ensured strict compliance of the conditions attached to the Notification. In this regard, Government places reliance on the judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that "concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory." Government also places reliance on the case of Collector of Central Excise, Vadodara vs Dhiren Chemical Industries 2002 (143)ELT 19 (SC) and Paper Products Ltd. vs Commissioner of Central Excise 1999(112)ELT 765(SC) in which the Hon'ble Supreme Court has stated that all the authorities working under the respective Central Excise/Customs Acts are to ensure strict applicability of all the relevant Notifications/Circulars as issued for the purpose. Further, the Apex Court in its judgement in M/s Eagle Flask Industries Limited 2004 (171) ELT 296 (S.C.) has made it very clear that even simple declaration / footnotes (in proper and original form) are vital and non-compliance of any required condition/declaration can result in denial of consequential benefit.

11. The applicant has relied upon Hon'ble Kolkata High Court judgment in the case of M/s Kosmos Health Care Pvt. Ltd. vs. Assistant Commissioner, Kolkata-I, reported as 2013 (297) ELT 347 (Cal.). On perusal of above said judgment, Government observes that the facts of the case was that after expiry of six months, the request of extension of time was rejected by the jurisdictional Commissioner. In this case, the applicant did not file any request for extension of time limit beyond six months. As such facts of this case being different, the ratio of Hon'ble Kolkata High Court cannot be made squarely applicable to this case.

12. The applicant has contended that the case laws relied upon by them vide their submission dated 15.04.2011 before the original authority has neither been analysed nor distinguished in the order. A perusal of the impugned Orders-in-Original shows that in para 11, the adjudicating authority has given a specific finding that "the contention of the claimant as above is not acceptable in the present case since all the three case laws pertain to exports made under Bond or under other schemes and have little bearing on the facts of the assessee". Government finds nothing to the contrary has been placed on record to interfere with this observation of the original authority.

13. In view of above discussions, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the same as just and legal.

14. The Revision Applications are thus rejected being devoid of merit.
15. So, ordered.



(**RIMJHIM PRASAD**)

Joint Secretary to the Government of India

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Attested



BHAGWAT P. SHARMA
OSD (R.A. WING)

ORDER NO. 63-65/2016-CX DATED 19.05.2016

Copy to:

1. The Chief Commissioner of Central Excise, Mumbai Zone-I, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai – 400 020.
2. The Commissioner, Large Taxpayer Unit, 29th floor, World Trade Centre, Cuffe Parade, Mumbai – 400 005.
3. The Assistant/Deputy Commissioner, Large Taxpayer Unit, GLT 4, 29th floor, World Trade Centre, Cuffe Parade, Mumbai – 400 005.
4. PA to JS (RA).
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(B.P. SHARMA)
OSD (Revision Application)

