

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.198/34/2014-RA

Date of Issue:

---

ORDER NO. 631 /2020-CX (WZ)/ASRA/MUMBAI DATED 15.09.2020 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.

Applicant : Commissioner of Central Excise, Kolhapur.

Respondent : M/s ACG Pharmapack Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-002-APP-160-13-14 dated 31.12.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II.

ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Kolhapur (hereinafter referred as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-002-APP-160-13-14 dated 31.12.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II.

2. The brief facts of the case is that M/s ACG Pharmapack Pvt. Ltd., Gat No. 448, 464, Shindewadi, Post. Shirwal, Tal. Khandala, Dist. Satara-412 801 (hereinafter referred as "the Respondent") are engaged in the manufacture of PVDC Coated PVC films falling under Chapter 39 of the first schedule to the Central Excise Tariff Act, 1985.

3. The Respondent had cleared excisable goods for export on payment of Central excise duty vide 53 ARE-1s and subsequently filed rebate claims total amounting to Rs. 59,21,572/- (Rupees Fifty Nine Lakhs Twenty One Thousand Five Hundred and Seventy Two only). The said 53 rebate claims total amounting to Rs. 59,21,572/- were sanctioned by the Assistant Commissioner, Central Excise, Satara Division, Kolhapur Commissionerate vide Order-in-Original No. Satara/199/ADJ/2012 dated 15.03.2013.

4. However, Department filed appeal before the Commissioner(Appeals), Central Excise, Pune-II against the said Order in Original dated 15.03.2013 on the grounds that

- (i) The Respondent had failed to submit the Original and Duplicate copies of the said ARE-1 giving complete details and particulars of export, on the reverse of the ARE-1s, suitably endorsed by the Custom Authorities, as such as details of the vessel through which export took place, the date of export and the Mate Receipt number. Therefore, it appeared that proof of export was not submitted.
- (ii) On the reverse of the Original and Duplicate copies of the ARE-1 No. 566 dated 30.09.2012, the original details, like "Vessel Name & date, Mate Receipts Number & Date" are struck out and fresh details are written down. Under the circumstances, the endorsement made by

Customs officer, but striking out original details, does not provide required proof of export.

5. The Commissioner (Appeals) vide Order in Appeal No. PUN-EXCUS-002-APP-160-13-14 dated 31.12.2014 rejected the said departmental appeal.

6. Being aggrieved, the Department has filed the Revision Application on the following grounds :

- (i) The rebate of duty on export of goods is admissible under the provisions of Section 11B of the Central Excise Act, 1944. Further, the Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 lays down the conditions, limitation and procedure for filing rebate claim with the Department. The details of goods viz. Description, classification, quantity, value and duty payable, etc. are to be filed by the exporter on the fact of the ARE-1, whereas details like Shipping Bill number, Vessel through which export took place are to be filled on the reverse of the ARE-1.
- (ii) The reverse side of ARE-1 under the above notification has four parts - A,B,C and D each for a specific purpose. The format prescribed as per law, clearly stipulates that the Form ARE-1s has to be prepared in such a way that the details of goods to be exported appear on the face of the ARE-1s and the certifications by the various authorities in relation to the goods being exported, have to be obtained on the reverse of the same.
- (iii) In the present case, the details like Vessel name and date, Mate Receipt number & date mentioned on the reverse of ARE-1 No. 566 dated 30.09.2012 had been struck and re-written. In such circumstances considerable doubt arise regarding the actual export details. Further, such an ARE-1, cannot be said to be providing proof of export, as such ARE-1 is always open to mis-use.

- (iv) The legal position as well as procedure for export and claiming rebate of duty, as outlined above, clearly indicates that documents viz original/ duplicate copy of ARE-1 duly certified by Custom Officer are fundamental requirement for sanctioning rebate claim. In absence of original/duplicate copy of the ARE-1 duly endorsed by Customs, and the fact that same detailson ARE-1 have been struck and re-written, export of duty paid goods cleared on ARE-1 form, from factory cannot be established.
- (v) In view of the aforesaid grounds, it is prayed that the Order-in-Appeal dated 31.12.2013 be set aside.

7. Personal Hearing in this matter was held on 16.01.2020. Shri Rajesh Kumar, Superintendent, Shirwal Range-I, Satara Division-I appeared on behalf of the Applicant and Shri Shivshankar Mishra, Manager Indirect taxation and Shri D.H. Nadkarni, Advocate appeared on behalf of the Respondent appeared for the hearing. The Respondent submitted that the objections in Order-in-Original were 'technical'. The Order-in-Original and Order-in-Appeal both were in their favour and requested the Order-in-Appeal be upheld.

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

9. Government observes that it is well settled legal position that procedural requirement may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. In the instant case, the Commissioner (Appeals), while setting aside the said Appeal filed by the Applicant vide Order in Appeal No. PUN-EXCUS-002-APP-160-13-14 dated 31.12.2014 observed that:

*"... the Respondents have in respect of the disputed ARE-1s submitted other connected documents like Shipping Bill, Bill of Lading, Mate Receipt, etc. Along with their rebate claim which can be co-related and they also sufficiently prove that the goods have been exported and thus can be accepted as proof of export when the authenticity of the documents submitted by the Respondents is not*

*doubted. The deficiency in the documents is purely procedural or technical in nature. "*

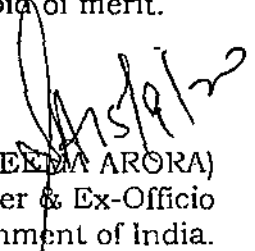
Therefore, Government concurs with the findings of the Commissioner(Appeal).

10. There are catene of judgments on the said issue laying down that substantive benefits cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is payment of duty on manufactured product and its subsequent export. As long as this requirement is met, other procedural deviations can be condoned.

11. In view of above discussions and findings, Government upholds the impugned Order-in-Appeal No. PUN-EXCUS-002-APP-160-13-14 dated 31.12.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II and Order-in-Original No. Satara/199/ADJ/2012 dated 15.03.2013.

12. The Revision Application is therefore rejected being devoid of merit.

13. So ordered.

  
(SEEMA ARORA)

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

ORDER No. 631/2020-CX (WZ)/ASRA/Mumbai DATED 15.09.2020.

To,  
The Commissioner of Central Goods & Service Tax,  
GST Bhavan,  
Kolhapur- 416 001

Copy to:

1. M/s ACG Pharmapack Pvt. Ltd., Gat No. 448, 464, Shindewadi, Post Shirwal, Tal. Khandala, Dist. Satara-412 801.
2. The Assistant Commissioner of Central GST, Division-I, Satara Plot No. P-11/14, Old MIDC, Satara - 415 004.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.