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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.195/122/2014-RA

Date of Issue:

ORDER NO. 632/2020-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 : M/s Prayosha Health Care Pvt. Ltd.

Respondent : Commissioner of Central Excise & Customs, Surat-II

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. SUR-EXCUS-
002-AIP-243-13-14 dated 22.11.2013 passed by the
Commissioner (Appeals), Central Excise, Customs & Service
Tax, Surat-II.

ORDER

This Revision Application is filed by the M/s Prayosha Health Care Pvt. Ltd., Plot No. 6209, GIDC Estate, Ankleshwar, Dist. Bharuch - 393 992 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. SUR-EXCUS-002-APP-243-13-14 dated 22.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

2. Briefly, the Applicant is a manufacturer of excisable products had filed two rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification Nos. 19/2004-CE(NT) and 20/2004-CE(NT) both dated 06.09.2004. The details are as given below:

| Sl.No | Date of filing the claim | ARE-1 No & date | Amount claimed (Rs) | Shipping Bill No & date | Invoice No. & date |
|-------|--------------------------|-------------------|---------------------|-------------------------|----------------------|
| 1 | 19.07.12 | 30 dt 19.01.12 | 41,818 | 723741 dt. 25.01.12 | 00547 dt 19.01.12 |
| 2 | 05.09.12 | 31 dt 07.02.12 | 41,406 | 7896691 dt. 06.03.12 | 00586 dt 07.02.12 |

On verification of the rebate claims, it was observed that the Applicant had manufactured and cleared on payment of duty to Merchant Exporters i.e. M/s Euresion, Marine Lines, Mumbai and M/s Pradipkumar Pharma Pvt Ltd., Bhiwandi respectively. It was observed that the goods for export had not moved directly from the factory to the port of exportation, but had been cleared by exporters i.e. M/s Euresion, Marine Lines, Mumbai and M/s Pradipkumar Pharma Pvt Ltd., Bhiwandi from their premises. The said premises were neither registered with Central Excise department nor had the same been notified by the CBEC by a General or Special Order. Hence deficiency memos dated 28.09.2012, 29.11.2012 and 03.12.2012 were issued to the Applicant as it appeared that the rebate claims did not fulfill the conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 since as per the Notification No. 19/2004-CE(NT) dated 06.09.2004 read with

Para 1(i) & (ii) of Part-I of Chapter 8 of CBEC's Excise Manual of Supplementary Instruction, 2005 goods cleared for export should directly go to the port of shipment from a factory or warehouse, or as other wise permitted by the CBEC. The Assistant Commissioner of Central Excise and Customs, Division-II, Ankleshwar, Surat-II vide Order-in-Original No. 443 & 444/SRT-II/ANK-II/REBATE/13-14 dated 18.04.2013 rejected the two rebate claims. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II. The Commiissioner (Appeals) vide Order-in-Appeal No. SUR-EXCUS-002-APP-243-13-14 dated 22.11.2013 rejected the Applicant's appeal

3. Accordingly, the Applicant filed the current Revision Application on the following grounds:

- (i) The goods were undisputedly exported as it was quite evident from the different documents such as ARE-1s, Shipping Bills, Bills of Lading, etc. The fact regarding export of the finished goods have not been disputed by both the lower authorities. And in such a situation, as per settled legal position, rebate cannot be denied.
- (ii) The goods had in fact been directly exported from the Applicant's factory only as it was quite evident from the different export documents. No document demonstrates that the export had been carried out from the place other than the factory premises. As a matter of fact, export had been carried out from the factory premises only.
- (iii) The contention of the Commissioner(Appeals) is that the goods had not moved directly from the factory to the port. In the instant case, the merchant exports had insisted to send the materials to their premises because they intended to verify whether the packing of the finished goods was in proper condition or not..
- (iv) Rebate cannot be denied because

The fact of the export of goods in question is not disputed. In Para 5.1, 5.5 and 5.8 of the Order-in-Appeal, the Commissioner(Appeal) has admitted that the goods cleared from the Applicant's factory were later exported by the Merchant exporters.

- (v) It is also not the case of the department that the Merchant Exporter had changed the packing of the goods or that the goods which were removed from the factory premises, the same goods, in a same packing condition, have not been exported. If the packing materials or goods were different then the customs officers would have certainly taken objection. In the circumstances, the ground canvassed in the Order-in-Appeal is not sustainable.
- (vi) The goods were examined at the port of shipment and customs officer had examined the goods along with the details mentioned in the relevant documents such as ARE-Is, invoices, packing list, Export Invoices, etc., and after satisfying, the consignments were allowed to be exported. In the circumstance, the lower authorities had erred in rejecting their rebate claims.
- (vii) The contention of the Commissioner(Appeals) that the merchant exporters are not registered with the department, is not at all relevant in as much as whether the merchant exporter is registered or not with the Central Excise department does not have any bearing on sanction of rebate claims. The Notification No. 19/2004 does not prescribe the condition that the merchant exporter should be registered with the department.
- (viii) As regard the Circular No. 579/16/2001-CX dated 20.06.2001, the said Circular has been issued in the context of different Notification which was prevailing in the year 2001, whereas in the current case, the Applicant had exported the finished goods under the Notification No. 19/2004-CE(NT) dated 06.09.2004. Thus, the circular which was issued in the year 2001 in the context of different Notification cannot

be made applicable to the exports carried out under the Notification No. 19/2004-CE(NT).

- (ix) The Commissioner(Appeals) has sought to distinguish the earlier GOI Order No. 667-673/12-CX dated 26.06.2012 by holding that in current case, the ARE-1 is neither prepared at the end of exporter nor the goods was examined by Range Superintendent in whose jurisdiction the godown/ warehouse of the exporter is situated. This is absolutely extraneous contention in as much as, in terms of the procedure, the ARE-1 is always to be prepared by the manufacturer of the finished goods and not by the merchant exporter, but the merchant export is required to sign the ARE-1. The consignment have been cleared under the Self Removal Procedure, but before the export of the goods, the Customs Officer had examined/ verified the goods along with the documents prepared by the manufacturer and exporter of the good and then allowed export. In the circumstance, the contention of the Commissioner(Appeals) is not legal and hence not sustainable.
- (x) In case of export of finished goods, such as export of the finished goods and the payment of duty are fulfilled, rebate can never be denied on the basis of the procedural lapse, if any.
- (xi) The Applicant prayed that the Order-in-Appeal be set aside and their application in full with consequential relief.

4. A personal hearing in the case was held on 23.10.2019. Shri Vinay Kansara, Advocate appeared on behalf of the Applicant, submitted written submission and reiterated the grounds of Revision Application.

5. 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.

6. In the instant case, the goods were cleared from the factory under the two ARE-1s which were duly signed by the manufacturer and respective

merchant exporter under 'Self Removal Procedural' and the goods were then sent to the merchant exporters godown & the merchant exporters had exported the said material. The Applicant submitted that the goods were examined at the port of shipment and customs officer had examined the goods with reference to the details mentioned in the relevant documents such as ARE-1s, invoices, packing list, Export Invoices, etc., and accordingly the consignments were allowed to be exported.

7. The basic issue involved in this case is whether the Appellate Authority was correct in rejecting the rebate claim, on grounds of non compliance of Notification No. 19/2004-CE(NT) dated 06.09.2004 which insist that the goods shall be exported from the factory of manufacturer or warehouse or as otherwise permitted by the CBEC, as the goods under claim of rebate were exported from the premises of the merchant exporter and not directly from the manufacturer's premises.

8. Government notes that there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgments, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty paid goods, rebate claims have to be held admissible:

- (i) GOI Order No. 664-666/12-CX dated 26.06.2012 in the case of Commr. of C.Ex., Customs & ST Vs M/s Rajat Pharmachem Ltd, Ankleshwar;
- (ii) GOI Order No. 656-660/12-CX dated 21.06.2012 in the case of Commr. of C.Ex.& Customs Vs M/s Khatu Shree Chem, M/s Avdhoot Pigments Pvt Ltd. and M/s Hay Yogeshwar Chemical Industries.

In view of above position, Government holds that rebate claims are not deniable to the applicant on the grounds that the goods could not be exported directly from factory or warehouse in terms of Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9. Government also notes that, while allowing the Revision application in favour of the Applicant, Government at para 12 of its 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. observed as under:-

"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers

Ltd. v. Dy. Commissioner 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit 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 its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.-This view-of condoning procedural-infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.), Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products - 1998 (103) E.L.T. 270 (Tri.), Creative Mobus 2003 (58) R.L.T. 111 (G.O.I.), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (G.O.I.) and a host of other decisions on this issue".


10. In view of above discussion, the Government opines that the correlation of the goods can be established from the Batch No., Description of goods, Quantity, Invoice Nos. on ARLE-1 and the endorsement of Customs Authority on ARLE-1s as well as relevant shipping bills. However, neither the adjudicating authority nor the Appellate Authority discussed the correlation of goods cleared from factory premises of the manufacture and subsequent export of impugned duty paid goods in their respective findings. Instead, the impugned rebate claim were merely rejected on the ground that the goods were cleared from the premises other than factory premises and were cleared without following self sealing procedure stipulated under Notification No. 19/2004-CF(NT) dated 06.09.2004 and also procedure prescribed under CBEC Circular No. 294/10/97-CX dated 30.01.1997. Neither the original authority nor the appellate authority have disputed the fact of export of goods anywhere in their respective orders. Perusal of the documents appended to Revision Application, reveals that material facts relevant to the export such as Description, quantity, weight etc. tally with the relevant

documents such as ARE-1s and Shipping Bills. The ARE-1s and Shipping Bills were duly certified by Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-Is Form. Therefore, it is incumbent upon the Respondent department to verify the documents furnished by the Applicant so as to satisfy that goods exported were not those cleared from the factory.

11. In view of discussion and findings elaborated above Government sets aside the set aside the Order-in-Appeal No. SUR-EXCUS-002-APP-243-13-14 dated 22.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II. The Original Authority is directed to verify the documents to be submitted by the Applicant consistent with observation made by this Authority supra. The Applicant is directed to submit all the documents before original authority for verification. The original authority will pass orders, after giving due opportunity of personal hearing also to the applicant in accordance with law, as expeditiously as possible.

12. The revision application is disposed off in the above terms.

13. So, ordered.


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

ORDER No. 632-/2020-CX (WZ)/ASRA/Mumbai DATED 15-09-2020.

To,
M/s Prayosha Health Care Pvt. Ltd.,
Plot No. 6209, GIDC Estate,
Ankleshwar, Dist. Bharuch,
Gujarat - 393 992

Copy to:

1. The Commissioner of CGST, New Central Excise Building, Chowk Bazar, Surat - 395 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.