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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No. 195/397/13-RA

Date of Issue:

ORDER NO. 634 /2020-CX (WZ) /ASRA/MUMBAI DATED 15-09 2020 OF THE  
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 CENTRAL EXCISE  
ACT,1944.

Applicant : M/s. Okasa Pharma Pvt. Ltd.

Respondent: Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under Section 35EE of Central Excise Act,  
1944 against Orders-in-Appeal Nos. US/910 & 911/RGD/2012 dated  
17.12.2012 passed by the Commissioner (Appeals), Central Excise,  
Mumbai Zone-II

**ORDER**

This Revision Application has been filed by M/s. Okasa Pharma Pvt. Ltd., Plot No. L02 Additional MIDC, Satara - 415 004 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. US/910 & 911/RGD/2012 dated 17.12.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II

2. The case in brief is that the Applicant, Merchant Exporter had exported the goods which was cleared from their manufacturer M/s Golden Gross Pharma Pvt Ltd. Daman and filed two rebate claims i.e. RC No. 31903 and 31904 both dated 24.03.2010 of duty totaling amounting to Rs. 53,890/- (Rupees Fifty Three Thousand Eight Hundred and Ninety Only) under the provision of 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004. The Deputy Commissioner(Rebate), Central Excise, Raigad, vide Order-in-Original No. 532/11-12/DC(Rebate)/Raigad dated 23.05.2012 rejected the refund claims as the Original and Duplicate copies of the ARE-1 duly endorsed by the Customs Officer were not filed along with the two rebate claims. Further, the Triplicate copy (Original) was also not submitted. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-II, who vide Orders-in-Appeal Nos. US/910 & 911/RGD/2012 dated 17.12.2012 rejected their appeal and upheld the Order-in-Original dated 30.04.2012.

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

- (i) The Applicant had cleared 30000 units of Omerprazol 20 mg Caps on ARE-1 No. 890/GCD/2008 dated 28.02.2009 and ARE-1 No. 850/GCD/2008 dated 17.02.2009 from manufacturer M/s Golden Gross Pharma Pvt Ltd. on payment of duty under claim for rebate as per Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules, 2002 and had been exported vide shipping Bill No. 7193797 dated 23.03.2009. However, the Original, Duplicate and Triplicate copy of ARE-1s were

misplaced. Therefore, they submitted rebate claim with photocopies of customs certified copy of ARE-1. The evidence of duty payment and export of goods had been submitted by them and it has not disputed by rebate sanctioning authority. Rebate claim had been rejected only on technical grounds.

- (ii) As per Notification No. 19/2004-CE(NT) dated 06.09.2004, in order to sanction the rebate claim duty paid goods must be exported. In their current case, this condition was fulfilled and there was no dispute on this ground. The other requirements are procedural. Further, the Notification does not remotely suggest rejection of rebate claim for non compliance of any procedural condition when duty payment and export of goods is not in dispute.
- (iii) The Applicant place reliance on the following case laws of GOI in this regard:
  - (a) IN RE: Commissioner of Central Excise, Bhopal [2006 (205) ELT 1093 (GOI)] Order No. 600/2005 dated 29.11.2005 and
  - (b) In RE: Kamud Drugs Pvt Ltd [2010 (262) ELT 1177 (Comm.Appl)]
- (iv) The Applicant prayed that the impugned Order-in-Appeal dated 17.12.2012 be set aside the rebate claims be sanctioned.

4. Applicant vide letter dated 29.10.2019 waived off personal hearing.

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. On perusal of the records, it is observed that the Applicant is now known by name Medisapry Laboratories Pvt Ltd. The Applicant in support of their rebate claims had produced the photocopy set of the following documents (except the invoice copy) :

- (i) Photocopy of relevant Original ARE-1 duly endorsed by the Officer of the Customs;
- (ii) Photocopy of relevant Duplicate ARE-1 duly endorsed by the Officer of the Customs;

- (iii) Photocopy of relevant Triplicate ARE-1;
- (iv) Relevant Excise Invoices under which the export goods were removed from the factory of manufacturer;
- (v) Self attested copy of Shipping Bill/Bill of lading and Mate Receipt;
- (vi) Declaration/undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same.

7. The Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Original, Duplicate and Triplicate copies of respect ARE-1. The Applicant submitted that the said goods had been exported vide Shipping Bill No. 7193797 dated 23.03.2009 and 7493797 dated 18.06.2009. However, the Original, Duplicate and Triplicate copy of ARE-1s were misplaced. Therefore, they submitted rebate claim with photocopies of customs certified copy of ARE-1. Further, evidence of duty payment and export of goods have been submitted by them and it was not disputed by rebate sanctioning authority. Rebate claim had been rejected only on technical grounds. Government finds that there are caters of judgments stating that substantive benefits cannot be denied on mere procedural lapse.

8. In this regard it is noticed that while deciding an identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as T10L 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), observed at para 16 as under :-

"16. However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE 1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter

*are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE 1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010 CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35FF of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.*

9. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

10. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to the issue in question. Government in the instant case notes that the original, duplicate and triplicate copies of relevant ARE-1s were misplaced/lost by the Applicant. However, they submitted the photocopies of the ARE1s duly endorsed by the Custom Officer and self attested copy of Shipping Bills and Mate Receipts. The Applicant then filed a rebate claims amount totally to Rs. 53,890/- dated 24.03.2010.

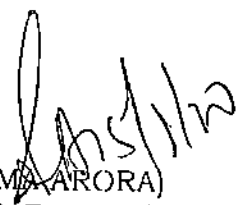
11. Therefore the documents so furnished by the Applicant indisputably proves show that goods under claim for rebate have been exported and hence the rebate claim should not be denied only on grounds of non production of original, duplicate and triplicate copy of ARE-1s. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant and resorting rejection on technical grounds/procedural lapses did not serve the purpose of fairness of justice.

12. With the observations supra, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the applicant. After satisfying the authenticity of those documents, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. In view of above, Government sets aside the impugned Orders-in-Appeal Nos. US/910 & 911/RGD/2012 dated 17.12.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II in respect of the Order-in-Original dated 23.05.2012.

14. The revision application is allowed in terms of above.

15. So ordered.

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

ORDER No 63A /2020-CX (WZ) /ASRA/Mumbai DATED 15.9.2020

To,

To,

M/s. Okasa Pharma Pvt. Ltd.,  
(Now know as M/s Medispray Laboratories Pvt.Ltd),  
Plot No. L02 Additional MIDC,  
Satara - 415 004.

Copy to:

1. Commissioner of Central Excise(Appeals), Mumbai Zone-II.
2. The Commissioner of CGST, Belapur Commissionerate, 1<sup>st</sup> floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file.
5. Spare Copy