

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.198/17/2013-RA / 1339

Date of Issue: 24.02.2021

ORDER NO. 77/2021-CX (WZ)/ASRA/MUMBAI DATED 10.02.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

Applicants : Commissioner of Central Excise & Service Tax, LTU, Mumbai

Respondents : M/s Glenmark Pharmaceuticals Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise
Act, 1944 against the Order-in-Appeal No. BPS/136-
139/LTU/MUM/2012 dated 14.12.2012 passed by the
Commissioner (Appeals), Central Excise, Customs & Service Tax,
LTU, Mumbai

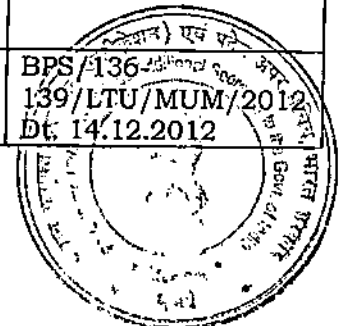


ORDER

This Revision Application is filed by the Commissioner, Central Excise, Customs & Service Tax, LTU, Mumbai (hereinafter referred to as "the Applicant") against Order-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai

2. The issue in brief is that the M/s Glenmark Pharmaceuticals Ltd. (herein after as "the Respondent") are engaged in the manufacture of Pharmaceutical Products falling under Chapter 30 of the Central Excise Tariff Act, 1985 having Central Excise Registration under LTU, Mumbai. Most of the goods manufactured and cleared by them are exported on payment of duty. They filed rebate claims in terms of the Notification No. 19/2004 C.E.(N.T.) dated 06.09.2004, issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 in respect of the excise goods exported on payment of duty against various ARE 1s. On receipt of subject rebate claims, the respondent was issued Deficiency Memo asking clarification as to why the rebate claims pertaining to goods cleared after a period of six months from their factory clearances should not be rejected. After receiving the clarification from the Respondent, the Deputy Commissioner, LTU, Mumbai passed the Orders-in-Original, sanctioning the rebate claims partly and rejecting the balance rebate claims. Aggrieved, the Respondent filed appeal before the Commissioner (Appeals), LTU Mumbai. The Commissioner (Appeals), vide impugned Orders-in-Appeal Nos BPS/136-139/LTU/MUM/2012 dated 14.12.2012 allowed their appeals with all consequential relief. The details are as given below:

| Sr.No. | Nos of ARE-1 | Total rebate amount claimed (Rs) | OIO No. & dt | Sanctioned amount (Rs.) | | Rejected amount (Rs) | OIA No. & dt |
|--------|--------------|----------------------------------|--|-------------------------|------------------|----------------------|--|
| | | | | RTGS | Credit by Cenvat | | |
| 1 | 32 | 616,463 | LTU/MUM/CX/GLT-4/R-324/2012 dt 23.4.2012 | 311331 | 191048 | 114084 | BPS/136-139/LTU/MUM/2012 dt 14.12.2012 |



| | | | | | | | |
|---|----|--------|---|-------|-------|--------|--|
| 2 | 04 | 141436 | LTU/MUM/CX/GLT-4/R-323/2012 dt 23.4.2012 | 37436 | 13839 | 90161 | allowed Respondent's appeals with all consequential relief |
| 3 | 03 | 42778 | LTU/MUM/CX/GLT-4/R-322/2012 dt 23.4.2012 | 28396 | 2963 | 10879 | |
| 4 | 02 | 148370 | LTU/MUM/CX/GLT-4/R-321/2012 dt 23.4.2012 | 58339 | 38866 | 52165 | |
| | | | | | | 267293 | |

4. Being aggrieved, the Applicant Department filed aforementioned Revision Application against the impugned Order in Appeal on following grounds:

- (i) The Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims. The rebate sanctioning authority disallowed the rebate amount of duty details given in Para 3 above. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in the impugned order by the Commissioner(Appeals) that substantive benefits cannot be denied on account of minor procedural infractions. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or the fundamental requirement for grant of rebate is manufacture and subsequent export of excisable goods. As long as this requirement is met, other procedural deviations can be condoned. Once the fact is established that the duty paid excisable goods cleared from the place of its manufacture for export are actually exported, the failure to observe the procedural norms, if any, can be considered for waiver and relied upon the case of IN RE: Alcon Biosciences Pvt. Ltd [2012 (281) ELT 732 (GOI)]. However, the above case is no in consonance with the subject issue and hence is not applicable.
- (ii) The Commissioner(Appeals) further relied upon the judgement in the case of HPCL Vs Collector of C.Ex. [1995 (77) ELT 256 (SC)]. In Para 11 of the said order which is also not applicable in the instant case and is misplaced as it refers to the interpretation of duty liability in respect of export under Rule 12 and Rule 13 of Central Excise Rules, 2002 and common procedure



provided therein and not speaks about any relaxation in following the procedure.

- (iii) Under Rule 18 of the Central Excise Rules, 2002, the Central Government has issued a Notification No. 19/2004-CE (NT) dated 06.09.2004 prescribing the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that, the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. Thus his mandatory requirement is not fulfilled by the claimant.
- (iv) The Respondent had failed to fulfill the condition No. (2)(b) of Notification No. 19/2004-CE (NT) dated 06.09.2004 by not getting the required permission from the jurisdictional Commissioner of Central Excise for exporting the goods beyond a period of six months and thus the mandatory requirement was not fulfilled.
- (v) Thus the Applicant requested that the Orders-in-Appeal allowing amount of rebate claims amounting to Rs. 2,67,293/- relating to their excisable goods on account of delay in export of goods beyond six months' period from the date of removal of the excisable goods from the factory, be set aside and suitable orders be issued considering the above submissions.

5. On the revision application, the Respondent filed cross objections on the following grounds:

- (i) Substantial compliance had been made by the Respondent while exporting the goods as well as the documents confirm that the goods were exported and there was 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 Department.
- (ii) The exports when made under Bond/UTI Certificate though when made without payment of duty, the goods as cleared for export cannot be held to



be exempted from payment of duty as ruled by different Benches of Tribunals as well by GOI.

- (iii) In the present case they had exported goods under Rules 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended. Among other conditions, one of the conditions of six months has been commonly prescribed for the fulfilment of both the notifications. The existing Rules 18 & 19 of Central Excise Rules, 2002 are pari materia with erstwhile Rules 12 & 13 of Central Excise Rules, 2002, 1994. Consequently, the contention of the Department that the exports made under Bond or under other schemes and have little bearing on the facts pertaining to the claim made by the Respondent is totally fallacious and cannot be accepted. As a result, the ruling made in the case of Rahul Computex Pvt Ltd. [2007 (208) ELT 296] holds also goods for goods cleared with payment of duty and exported after six months of its factory clearances and accordingly, rebate/refund was correctly upheld by the Commissioner(Appeals).
- (iv) The position in law is sell settled that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The administrative authorities should, instead of relying on technicalities, act in a manner consistent with a broader concept of justice, if a feeling is to be nurtured in the minds of the citizens that the Government is by and for the people.
- (v) In the present case, in case, if the Respondent had sought permission for extension of time period for exportation of goods, then the Department was ready to grant the refund claim. From the cited cases it can be inferred that procedural lapses, if any, to be condoned when -substantial compliance of other conditions are satisfied. Consequently, rebate claim is correctly held as applicable to the Respondent.
- (vi) It is the intention of the Government not to export taxes. In this they relied in the case of Repro India Ltd Vs UOI [2009 (235) ELT 614 (BOM)].



- (vii) As regard to the Department's disagreement in relying in the case of Alcon Biosciences Pvt. Ltd [2012 (281) ELT 732 (GOI)], the issue also was regarding the rulings made by the Revisionary Authority as follows:

"Government observes that there are catena of judgments that the substantive benefit cannot be denied for procedural infractions/lapses. The core aspect or fundamental requirement for claiming rebate is payment of duty on materials and their use in the manufacture of exported goods. Since there is no dispute about this fulfilment of fundamental requirement, the rebate claim cannot be denied."

In the present case too, the goods were exported under the Rule and the notification issued there under by following most of the procedure prescribed in therein and as substantial compliance was made by the Respondent and accordingly, the rebate was correctly held to be awarded to the Respondent by the Commissioner (Appeals)

- (viii) As regard to the aversion of relying in the case of HPCL Vs Collector of C.Ex. [1995 (77) ELT 256 (SC)] , the said Ruling was made by the Hon'ble Apex Court when the issue of exports were made under Rule 12 & 13 of erstwhile Central Excise Rules, 1994 wherein it was held that the said Rule 12 & 13 of the Rules are complemenatry to each other and cover the same topic of payment of appropriate of excise duty on exports goods and the duty liability under Rule 13 is linked up with Rule 12. In fact, the Respondent had already submitted a detailed submission on the issue of fact of pari material of the erstwhile Rules and the present Rules. Therefore, the reliance as made by the Commissioner (Appeals) was in order while passing the Order-in-Appeal in favour of the Respondent.

- (ix) In fact, erstwhile Notification No. 42/2001-CE(NT) dated 26.06.2001 as issued under Rule 19 of Central Excise Rules (No. 2), 2001 and Notification No. 40/2001-CE(NT) dated 26.06.2001 issued under Rule 18 of Central Excise Rules (No. 2), 2001 also had prescribed proviso of goods cleared for exportation on payment of duty within six months from the date of clearances of goods from factory premises and the cases cited and relied by us though were made in respect of the erstwhile Rules, the same are pari material with the present Rules 18 & 19 of Central Excise Rules, 2004



(x) The Respondent therefore submitted that the Order-in-Appeal dated 14.12.2012 deserve to be held as proper.

6. A personal hearing in the case was held on 27.01.2021. No one was present from the Applicant Department. Shri Chaudhary, Manager appeared online on behalf of the Respondent. The Respondent submitted that Order-in-Appeal passed by Commissioner(Appeals) may be maintained as minor procedural delay in export was rightly condoned by Commissioner(Appeals).

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.

8. On perusal of records, it is noted that the Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims and the rebate sanctioning authority disallowed the rebate amount of duty. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest. It is also observed that in the findings of impugned orders by the Commissioner(Appeals), he observed that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory.

9. Government observes that the Commissioner(Appeals) has allowed the rebate of central excise duty paid on goods which have not been exported within six months of their clearance from the factory on the ground that there was no dispute about the duty paid nature of the goods, that the respondent could not be deprived of substantive benefits for minor procedural infractions, that there was substantial compliance. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the present case, the Respondent has not made any such effort.



10 However, there has been failure on the part of an established manufacturer in not even applying to competent authority for extension of time, which cannot be justified. The Respondent has exhibited utter disregard for the procedures laid down. The judgments relied upon by the Commissioner(Appeals) are not on the specific issue involved in these proceedings and are therefore distinguishable. However, the Hon'ble Bombay High Court has in the case of Cadila Healthcare Ltd. vs. UOI [2015(320)ELT 287(Bom)] while interpreting the amplitude of condition 2(b) held that the Maritime Commissioner(Rebate) had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief. The judgment of the Hon'ble Bombay High Court being a judgment rendered by the jurisdictional High Court is binding and therefore the order of the Commissioner(Appeals) allowing the rebate in respect of exports which were not effected within permitted period of six months from the date of clearance of goods from the factory cannot sustain.

11. Government also relies on GOI Order No. 390/2013-CX. dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

"Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original."



12. In view of the above discussions and findings, Government sets aside the Orders-in-Appeal Nos BPS/136-139/LTU/MUM/2012 dated 14.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai and restores the impugned Orders-in-Original.

13. Revision Applications are allowed in terms of above.

Shrawan
10/02/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 77/2021-CX (WZ)/ASRA/Mumbai Dated 10.02.2021

To,

M/s Glenmark Pharamaceuticals Ltd.,
Glenmark House, B.D. Sawant Marg,
Andheri (East),
Mumbai 400 099.

1. The Commissioner of GST & CX, Mumbai East Commissionerate.
9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

