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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

F.No. 380/82/DBK/13-RA/150

Date of Issue 29.11.2018

ORDER NO. 847/2018-CUS (SZ) / ASRA / MUMBAI / DATED 25.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

**Applicant** : Commissioner of Customs (Export), Customs House,  
C Chennai.

**Respondent:** M/s.Aurobindo Pharma Ltd.

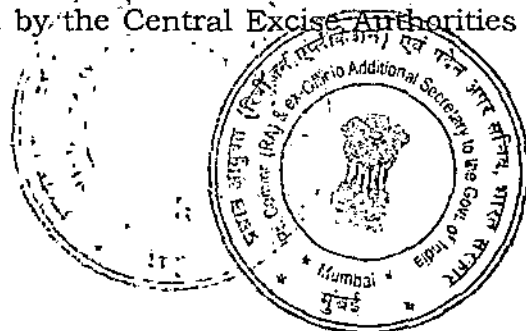
**Subject** : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in- Appeal No.C.CUS No.720/2013 dated 16.05.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

The revision application is filed by Commissioner of Customs (Export), Custom House, Chennai against the Order in Appeal No.720/2013 dated 16.05.2013 passed by Commissioner of Customs (Appeals), Chennai in respect of Order in Original No. 16818/2011 dated 15.7.2011 passed by the Assistant Commissioner of Customs, DBK -SEA, Chennai.

2. Brief facts of the case are that M/s. M/S. Aurobindo Pharma Ltd., (herein after referred to as respondent) has re-exported Centrifugal Dryer under Section 74 of the Customs Act, 1962. Of the total import duty of Rs.51, 80,575 (Rupees Fifty One Lakh Eighty Thousand Five Hundred Seventy Five), the exporters have availed Rs.12, 59,279 (Rupees Twelve Lakh Fifty Nine Thousand Two Hundred Seventy Nine) as Drawback under Section 74 of the customs Act, 1962 towards Basic Custom Duty and for the Central Excise duties i.e. Countervailing Duties and Special Additional Duties, paid on imported goods, they have filed a rebate claim before the Commissioner of Central Excise, Export Claims, Chennai. The responded was sanctioned drawback of 85 % of import duties from the Drawback Department, Custom House, Chennai. On issuance of Show Cause Notice by the Central Excise Authorities on the eligibility of the said rebate claim under the CENVAT credit Rules, the rebate application was withdrawn by the respondent and filed a supplementary claim for Rs.36, 99,070 before the Drawback Section. The drawback claim towards the CVD and SAD portion was rejected by the Assistant Commissioner (Drawback) citing non submission of proof towards withdrawal of rebate claim or dropping of Show Cause Notice by the Central Excise Authorities. Aggrieved by the said Order, the respondent preferred an appeal with Commissioner (Appeals), who allowed the appeal with consequential relief on grounds that the Supplementary claim filed by the respondent towards the central excise duties is well within the time limit allowed under Section-74 of the Customs Act, 1962 and the rebate claim was rejected by the Central Excise Authorities to facilitate the appellant to



file claim with the appropriate authorities. Aggrieved by the Order in Appeal, the Commissioner (Export), Chennai filed the instant Revision Application.

3. Personal Hearing was held on 27.09.2018. Shri.N.Ram Reddy, Advocate appeared on behalf of the respondent reiterating the findings of Commissioner (Appeals) and also filed written submissions pleading for upholding the Order in Appeal and dismissal of the Revision Application. No one appeared on behalf of the Department.

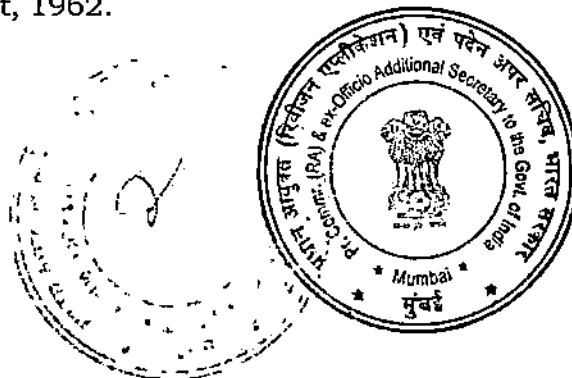
4. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

5. The main submissions of the applicant are:

- i) Commissioner (Appeal) erred in finding that the supplementary claim filed on 16.09.2009 is well within the time although the said claim was filed Two months after the stipulated period of Three months.
- ii) Commissioner (Appeals) did not appreciate the provisions of Section 74 of the Customs Act, 1962.

6. The respondents have pleaded for dismissal of the revision application on grounds of limitation as the same was not controversy before the Commissioner (Appeals) and further placed reliance on case laws High Polymer Labs Ltd Vs Union of India 2016(344) ELT and Sonia Overseas Pvt Ltd Vs Union of India 2015(316) E.L.T.578 (P&H) argued that in pursuing the period spent before the wrong forum should be excluded in considering the limitation.

7. The limited issue before the Government for consideration is whether the supplementary claim filed by the respondent towards central excise portion of import duties on re-exported duties is eligible for drawback under Section 74 of the Customs Act, 1962.



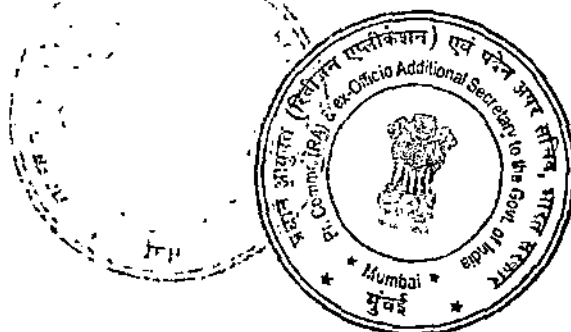
8. It is evident from the records that the respondents initially filed drawback claim on 22.4.2009, under Section 74, only towards the Basic Custom Duty portion of import duties and the same was sanctioned by the Department and for the CVD and SAD component of import duties, they have filed a rebate claim before the Central Excise Authorities. On rejection of the rebate claim, the respondents have filed a supplementary claim on 16.09.2009 seeking drawback of the CVD and SAD.

9. The Government notes that there is no dispute on the eligibility of the re-exported goods for drawback in terms of identity of goods, time limit of re-exported goods etc., essential conditions under Section 74 and the issue is non submission of claim towards central excise duties with in the time limit prescribed under Rule 5(1) of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

10. The Government finds that the reasons for non-submission of the drawback claim for total import duties paid on re-exported goods was that for the CVD and SAD portion paid at the time of import, the respondent simultaneously filed a rebate claim with the central excise authorities. Since the same was rejected as non-admissible as rebate under Central Excise Rules, 2002, the respondent approached the Drawback section for drawback of central excise duties.

11. In view of the facts that, the initial claim was filed within the stipulated time, claims for rest of the duties was being simultaneously pursued with the Central Excise Authorities, the Supplementary claim has been found admissible by the Original Authority, no dual benefits are availed on the re-exported goods, the Government finds no merit in departments stance of rejecting the drawback claim on grounds of limitation.

12. The Government opines that there are catena of judgments towards the judicial principle that the substantive benefits cannot be denied on procedural lapses and in the instant case, the re-exported goods complies with the provisions of re-export under Section 74 of the Customs Act,



1962, therefore the respondent is entitled for refund of import duties on re-exported goods.

12. In view of the above discussion and findings, the Government do not find any reasons to interfere with the Order of the Commissioner (Appeals). Hence Order-In-Appeal C.Cus.No.720/2013 dated 16.05.2013 is upheld and Revision Application is dismissed.

13. So ordered.

*(Handwritten Signature)*

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 842/2018-CUS (SZ) /ASRA/

DATED 25.10.2018

To,

M/S.Aurobindo Pharma Ltd,  
Plot No.2, Maitri Vihar,  
Ameerpet,  
Hyderabad - 500038.

Copy to:

1. The Commissioner of Customs (Export), Custom House, Chennai-600001.
2. The Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai-600001.
3. Assistant Commissioner of Customs, Drawback, Custom House, Chennai.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

**ATTESTED**

*(Handwritten Signature)*  
B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

