

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.198/212/16-RA, 198/121A-121B/13-RA,
198/34/17-RA

Date of Issue:

22.09.2022

4056

ORDER NO. 871-874 /2022-CX (WZ)/ASRA/MUMBAI DATED 21.09.2022 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.

Subject : - Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Orders-in-Appeal No. SK/28 to
30/M-IV/2016 dated 28.06.2016, BPS(95-96)MI/2013 dated
23.09.2013 and SK/02/M-I/2017 dated 10.01.2017 passed by
the Commissioner of Central Excise (Appeals) - Mumbai-I.

Applicant : - Commissioner of Central Excise , Mumbai-I

Respondent: - M/s Uniworld Pharma Pvt. Ltd.

ORDER

These Revision applications are filed by Commissioner of Central Excise , Mumbai-I (hereinafter referred to as 'applicant') against the Orders-in-Appeal No. SK/28 to 30/M-IV/2016 dated 28.06.2016, BPS(95-96)MI/2013 dated 23.09.2013 and SK/02/M-I/2017 dated 10.01.2017 passed by the Commissioner of Central Excise (Appeals) - Mumbai-I .

2. Brief facts of the case are that the M/s. Uniworld Pharma Pvt. Ltd., situated at 12, Gunbow Street, Fort, Mumbai 400001 (hereinafter referred to as 'respondent') had filed rebate claims under Notification No.19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. On scrutiny , the rebate claims were returned to the exporter along with the original documents under the cover of deficiency memo directing to resubmit on removal of deficiencies. The claim was resubmitted by the exporter lately after exceeding the period of one year from the date of export. The details are as tabulated under:

TABLE

Sr No	ARE-1 No/Date	Date of Shipment	Rebate claim	Rebate claimed originally filed without relevant documents on	Defect Memo issued on	Rebate claim re-submitted on	Order in Original No and date	OIA
1	0016/AC C/2012 dated 26.07.2010	09.09.10	26530	07.09.2011	01.12.11	05.10.2012	KII/113-R/2013(MTC) dated 23.09.2013	BPS(95-96)MI/2013 dated 23.09.2013
2	MD2/262/2010 dated 19.02.2011	07.03.2011	10829	12.01.2012	02.04.2012	05.10.2012	KII/114-R/2013(MTC) dated 23.09.2013	
3	291/OP2/2010 dated 23.11.2010	24.12.2010	123227	22.09.2011	01.12.2011	19.10.2012	KII/114-R/2013(MTC) dated 23.09.2013	
4	281/OP2/2010 dated 17.11.2010	28.11.2010	124968	22.09.2011	01.12.2011	19.10.2012	KII/114-R/2013(MTC) dated 23.09.2013	

5	223/VPD/2010 dated 28.12.2010	12.01.11 13.01.11	17760	16.11.2011	13.02.2012	25.11.2014	594/MT C-R/2014-15 dated 19.02.2015	SK/02/M-I/2017 dated 10.01.2017
6	205/MDI/2010 dated 16.02.2011	09.03.11 01.03.11	7726	31.01.2012	02.04.2012	25.11.2014		
7	74/MDI/2010 dated 20.11.2010	30.12.10 30.01.11	5506	05.12.2011	27.02.2012	25.11.2014		
8	MD2/318/2010 dated 18.03.2011	04.04.11	26335	12.01.2012	2.4.2012	11.2.2014	60/MTC - R/2014-15 dated 09.05.2014	SK/28 to 30/M-IV/2016 dated 28.06.2016
9	160/VPD/2010 dated 16.10.2010	24.10.2010	11050	8.9.2011	1.12.2011	31.3.2014	95/MTC - R/2014-15 dated 30.06.2014	
10	205/HC/2/2010 dated 14.09.2010	30.12.2010	13122	31.10.2011	2.1.2012	28.3.2014	95/MTC - R/2014-15 dated 30.06.2014	
11	377/MIC/2010 dated 16.11.2010	28.11.2010	88656	13.09.2011	1.12.2011	25.4.2014	99/MTC - R/2014-15 dated 24.07.2014	
12	151/VPD/2010 dated 30.09.2010	27.10.2010	3129	08.09.2011	1.12.2011	25.4.2014	99/MTC - R/2014-15 dated 24.07.2014	

The applicant resubmitted these claims, beyond the one year period of limitation. Hence SCN was issued to the applicant asking them as to why the rebate claim should not be rejected being time barred in terms of Section 11B of the Central Excise Act, 1944. The Adjudicating Authority vide his Orders in Original as tabulated above rejected the rebate claims filed by the respondent on the grounds of time bar by considering the date on which the claim was filed with relevant documents is over one year from the date of export. Being aggrieved by the aforesaid-Orders in Original, the respondent filed appeal before Commissioner of Central Excise (Appeals) - Mumbai-I who vide Orders-in-Appeal No. SK/28 to 30/M-IV/2016 dated 28.06.2016, BPS (95-96) MI/2013 dated 23.09.2013 and SK/02/M-I/2017 dated 10.01.2017 allowed the appeals and set aside the OIOs.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:

- i. As per Rule 18 of the Central Excise Rules, 2002 ,Para (b) of the relevant Notification No. 19/2004-C.E. (N.T.) dated 06-09-04 and para 8.3 & 8.4 of Chapter 8 of Part-I of Excise Manual of Supplementary Instructions issued by CBEC ,it is observed that Divisional DC/AC has to satisfy himself regarding the export of goods as per the relevant documents, the duty payment, and unjust enrichment, etc., before taking a decision on the application for rebate / refund.
- ii. From the provisions in Section 11B of the Central Excise Act, 1944, it is clear that in order to be eligible for refund the respondent is under obligation to make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed. In the present case the respondent though initially filed the rebate claim within the time limit; all the claims were returned to the respondent along with all the documents under Deficiency Memo. Each Memo specifically pointed out the deficiency in the claim. It was brought to the notice of the respondent that the office of the rebate sanctioning authority was not in a position to process these claims. They were also requested to do the needful in the matter. All the claims were duly returned at the earliest and within the stipulated period of three months. Chapter IX of the CBEC Manual deals with REFUND and para No.2 deals with presentation of refund claim. Sub-para No. 2.4 deals with the subject matter of controversy and reads as under

"2.4-It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available"

- iii. The above instructions are binding both on the Department as well as a respondent. In Chapter 1 Part 1 of the said CBEC Manual the scope of the Manual has been explained. Paragraph No. 1.1 indicates that the instructions are supplemental to, and must be read in conjunction with the Act and the Rules. Paragraph No. 2 makes it clear that the Manual is a public document and is made available to all interested persons. On a conjoint reading of paragraph Nos. 1.1 and 1.2 of the Manual it is also apparent that instructions therein are applicable throughout India and officers of Central Excise Department are not entitled to depart therefrom, without previous approval of the Commissioner, who in turn is required to obtain sanction from CBEC for such deviation. This Manual is also made available to the trade and industry through website as well as through other media. As per the said instructions incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents should not be allowed and the claim is required to be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). Accordingly, the jurisdictional Central Excise officer had returned the rebate claim specifying the deficiency under a Deficiency Memo as the claim could have been taken as filed only when all relevant documents were made available or submitted. In the present case the claims were resubmitted only after a period ranging from one year and eleven months to two years and three months, after the same were returned under Deficiency Memo. These resubmissions were made way beyond the period of one year's period of limitation specified in section 11B of the Central Excise Act, 1944.
- iv. The discrepancies pointed out in the deficiency memo could have been rectified and complied within a reasonable period. But the respondent resubmitted the rebate claims well beyond the stipulated time without justifying the delay in resubmission of rebate claims.
- v. Production of all relevant documents, correct documents, correct information, in all respects, is mandatory as per provisions of section 11B(2) of Central Excise Act, 1944. Refund application in duplicate must be filed with DC/AC. The claim shall be taken as filed only when all relevant documents, correct documents, correct information in all aspects are

available/filed. In the present case, it is observed that they did comply with the requirements, as above, within one year from the date of export. As the appellant has not followed the proper procedure by not submitting all relevant documents, correct documents, correct information in all aspects in time as per the Notification No. 19/2004 (NT) dt 06.09.2004, as amended, read with Rule 18 of Central Excise Rules, 2002, the refund is liable for rejection.

vi. Applicant has relied upon various case laws :

- a) Dugar Impex Pvt. Ltd. vs Commissioner of Customs, Mumbai [2003(154)ELT 0576 Cal.]
- b) Malwa Cotton Spinning Mills Pvt. Ltd. Vs CCE, Ludhiana [2013(2) ECS(86)(Tr-Del)]
- c) Everest Flavours Ltd. Vs. UOI [2012(282)E.L.T. 481(Bom.)]
- d) Collector of Central Excise, Chandigarh Vs M/s. Doaba Co-operative Sugar Mills Ltd. Jalandhar[1998(37 E.L.T. 478(S.C.)]

vii. In view of the above, the applicant requested to set aside the impugned Orders-in-Appeal No. SK/28 to 30/M-IV/2016 dated 28.06.2016, BPS(95-96)MI/2013 dated 23.09.2013 and SK/02/M-I/2017 dated 10.01.2017.

4. Personal hearing in this case was scheduled on 16.02.2018, 03.03.2020, 11.02.2021, 25.02.2021, 02.02.2022, 09.02.2022, 16.06.2022, 21.07.2022 and 28.07.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Orders in Original and Orders-in-appeal.

6. Government observes that the respondent had filed rebate claims, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, all the rebate claims were returned vide deficiency memos. The respondent resubmitted the said rebate claims and since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these rebate claims as time barred.

7. Government notes that the said issue has already been decided vide GOI Revision Order No. 129-130/2022-CX(WZ)/ASRA/Mumbai dated 24.01.2022 (F.No. 195/180A-180B/14-RA) in the respondent's own case. In the said case, respondent had filed revision applications against Order-in-Appeal No. PD/32-33/MI/2014 dated 17.02.2014 passed by the Commissioner of Central Excise (Appeals) - Mumbai-I and D.C.C.Ex., Mumbai-I.

8. The operative portion of the said GOI Revision order dated 24.01.2022 is extracted as under :

"7. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Orders in Original and Orders-in-appeal.

8. Government observes that the respondent had filed five separate rebate claims, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, all the five rebate claims were returned vide deficiency memos. The applicant resubmitted the said rebate claims and since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these five rebate claims as time barred.

9. Government observes that Hon'ble High Court of Gujarat in a similar situation while allowing Special Civil Application filed by United Phosphorus Ltd., vide its judgement dated 06.05.2003 [2005 (184) E.L.T. 240 (Guj.)] held that the The applicant resubmitted these claims, beyond the one year period of limitation. Hence SCN was issued to the applicant asking them as to why the rebate claim should not be rejected being time barred in terms of Section 11B of the Central Excise Act, 1944. The Adjudicating Authority vide his Order in Original Nos K-II/786-R/2013 (MTC) and KII/790-R/2013 (MTC) dated 30.09.2013 rejected the rebate claims filed by the applicant on the same. He is obliged to pass an order on the merits of such application. When the refund sanctioning authority who received the original refund claims has not rejected these refund claims on merits and has merely returned the same, further filing of the refund claims ought to be considered only as resubmission and not as fresh claims.

10. Government further observes that similar stand has been taken by Hon'ble High Courts, GOI and Tribunals vide following judgements/orders, holding that time-limit is to be computed from the date on which refund/rebate claim was originally filed; that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held as time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE, Delhi-I v. Aryan Export & Ind. - 2005 (192) E.L.T. 89 (DEL.),*
- (ii) A Tosh & Sons Pvt. Ltd. v. ACCE - 1992 (60) E.L.T. 220 (Cal.)*

- (iii) CCE, Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (T. Kol.)
- (iv) Good Year India Ltd. v. CCE, Delhi - 2002 (150) E.L.T. 331 (T.-Del.)
- (v) CCE, Pune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).
- (vi) In Re: IOC Ltd. 2007 (220) E.L.T. 609 (GOJ).
- (vii) In Re: Polydrug Laboratories (P) Ltd., Mumbai (Order No.1256/2013- CX dated 13.09.2013.
- (viii) IN RE : TATA BLUESCOPE STEEL LTD2018 (364) E.L.T. 1193 (G.O.I)
- (ix) Apar Industries (Polymer Division) Vs Union of India {2016 (333) E.L.T. 246(Guj.)}

11. Government also observes that the decision of High Court of Gujarat in Apar Industries (Polymer Division) Vs Union of India {2016 (333) E.L.T. 246 (Guj.)} [Sl. No. (ix)] supra has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

12. Relying on various case laws discussed at paras 9 to 11 supra, Government holds that the time limitation in the instant cases is to be computed from the initial date of filing of such rebate applications. Since the said rebate applications are initially filed within stipulated time limit by the applicant, the same are to be treated as filed in time. However, these applications are required to be decided on merits in accordance with law on verification of documents/records.

13. In view of above discussion, Government modifies and sets aside the Order-In-Appeal No. PD/32-33/MI/2014 dated 17.02.2014 passed by the Commissioner of Central Excise (Appeals-I), and remands the case back to original authority to decide all the five rebate claims afresh in view of above observations and for taking appropriate decision on these rebate claims in accordance with law after giving adequate opportunity to the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. Revision application is disposed off on the above terms."

9. Government observes that ratio of above order is squarely applicable to these cases as facts of the cases are identical.

10. In view of above position, Government finds no infirmity in the impugned Orders-in-Appeal No. SK/28 to 30/M-IV/2016 dated 28.06.2016, BPS(95-96)MI/2013 dated 23.09.2013 and SK/02/M-I/2017 dated 10.01.2017 passed by the Commissioner of Central Excise (Appeals) - Mumbai-I and upholds the same.

11. Revision application is disposed off on the above terms.

Shrawan
21/9/22

(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 871 - 874/2022-CX (WZ) /ASRA/Mumbai Dated 21.09.2022

To,

1. M/s Uni World Pharma, 12, Gunbow Street, Fort, Mumbai-400 001.
2. The Commissioner of CGST, Mumbai South Commissionerate, Air India Building, Nariman Point, Mumbai 400021.

Copy to:

1. The Commissioner of CGST, Mumbai (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, 400 012.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.