



REGISTERED
SPEED POST

F.Nos. 195/565/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 10/7/13

ORDER NO. 874/13-Cx DATED 09-07-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the orders-in-appeal
No.107/2011 (Ahd-II) CE/CMC/Commr. (A) dated
31.03.2011 passed by Commissioner (Appeals-I)
Central Excise, Ahmedabad

APPLICANT : M/s Intas Pharmaceuticals Ltd., Ahmedabad

RESPONDENT : Commissioner of Central Excise, Ahmedabad-II

ORDER

This revision application is filed by M/s Intas Pharmaceuticals Ltd. Plot No. 457-458, Village Matoda, Tal. Sanand, Ahmedabad against the order-in-appeal No.107/2011 (Ahd-II) CE/CMC/Commr. (A) dated 31.03.2011 passed by Commissioner (Appeals-I) Central Excise, Ahmedabad with respect to order –in-original No. 22/Refund/11 dated 07.01.2011 passed by ACCE Divs.-IV, Ahmedabad-II.

2. Brief facts of the case are that the applicant had filed refund claim for Rs.4,30,762/- before the Assistant Commissioner for export of their goods under the provision of Section 11B(2)(a) of the Central Excise Act 1944 in respect of duty paid inputs used in manufacture of non- excisable medicaments viz. Paclitaxel Injection (of different strength) exported under Bond (executed before Prohibition & Excise Department of the State Government, and not before the Central Excise Authorities under Central Excise Act and Rules) under the prescribed form of State Excise i.e. AR-4 under supervision of Prohibition & State Excise Authority. Some of the inputs used in the manufacture of export goods are not covered under the orbit of the Central Excise Law as it contains some proportion of narcotic drugs or chemicals, and in terms of Note 5 of Chapter Notes of Chapter 30 of Central Excise Tariff Act, 1985 these products are covered under State Excise Authority. Cenvat credit is also not admissible on the said inputs under Cenvat Credit Rules 2004 and therefore duty paid by the applicant on such quantity of inputs is claimed as refund. Section 11B (2) (a) of Central Excise Act, 1944 provides that if the refund filed under Section 11B (1) is related to rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which hare exported out of India, then the amount of refund would not be credited to Consumer Welfare Fund but would be paid to the applicant. The Section 11B(2)(a) do not provide filling of any refund claim. Hence there is no provision under the said Section 11B (2)(a) for the filling of any refund claim. Therefore the said refund claimed by the applicant is not sustainable and liable for rejection. Therefore a show cause notice dated 2.11.2010 was issued to the applicant

proposing rejection of the refund claimed by the applicant. The refund claim was rejected vide impugned order.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who after consideration of all the submissions rejected the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :-

4.1 Whenever any exporter exports the goods, he exports the value in goods and not duty and taxes. Therefore if any duty is paid, the same is refunded back to the exporter. Knowing the fact very well that duty and taxes are to be consumed only in case if the goods are used within India. However in case of export of goods, the Government has provided the policy and procedure for claiming the refund of duty on goods exported or the refund of duty on inputs used for export goods, whether exempted, excisable goods or non-excisable goods.

4.2 The applicant would like to draw your attention on the allegations made in show cause notice and the ground for rejection of appeal taken by the lower Appellate Authority, it can be seen that the ground taken by the lower Appellate Authority was not a part of show cause notice and therefore as per Rule 5 of Central Excise (Appeals) Rules 2001.

4.3 It can be seen that the ground discussed in impugned order regarding the procedure laid down under Notification No. 21/2004-CE(NT) dated 6.9.2004 is not observed by the applicant, is not proper and legal, because the product exported is not falling within the purview of Central Excise as per Ch. Note 5 of Ch. 30 of Central Excise Tariff Act, 1985 but the applicant have observed the export procedure laid down under State Excise Rules as well as the refund claimed is not on final product but it is on the quantity of raw material consumed in quantity of goods exported.

4.4 The lower Appellate Authority has not applied his mind in holding that the provisions of Central Excise Act, 1944 and Rules made thereunder are not applicable to goods because the applicant has claimed the rebate / refund of duty of excise paid on the quantity of inputs consumed in goods exported (which covered under State Excise as per Ch. Note of Ch. 30 of Central Excise Tariff Act), which is admissible under Section 11B of the Central Excise Act, 1944 but as the applicant have to follow the Export Procedure prescribed by the State Government being the goods exported falling within the purview of State Excise, the Rule 18 of Central Excise Rules 2002 and procedure laid down under Notification No. 21/2004-CE(NT) dated 6.9.2004 is not required to be followed, however, under Section 11B of Central Excise Act, 1944 the refund of duty paid on the quantity of raw material consumed in final product which may be excisable goods or non-excisable goods, refund is admissible as per Part V of Chapter 8 of Central Excise Manual wherein at para 1.2 it is clarified that in Rule 18 and "in the said Notification, expression Export Goods has been used. It refers excisable goods "dutiable or exempted" as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not.

4.5 The applicant is relied on the following decisions of Hon'ble High Court and Tribunal and requested to consider these decisions.

(i) 2004(178) ELT 848 (Tri. – Chennai)

Medispan Ltd. vs. Commissioner of Central Excise, Chennai

Final Order No. 1007/2003, dated 25.11.2003 in Appeal No. E/1013/98

Cenvat/Modvat – Inputs – Export under bond - Medicine Ampicillina classified under sub-heading 3003.20 of Central Excise Tariff, attracting nil rate of duty – However authorities demanded reversal of credit taken, as final products exempted from duty – Following ratio of Norris Medicines Ltd., assessee's claim that once export is made under bond, Modvat credit cannot be denied even if final products are exempted,

allowed – Rule 57-I of erstwhile Central Excise Rules, 1944 – Rules 2 and 3 of Cenvat Credit Rules 2004. [para 5]

(ii) 2008 (226) ELT 587 (Tri. – Del.)

Punjab Stainless Steel Industries vs. Commissioner of Central Excise, Delhi-I

Final Order No.320/2008-SM(BR) (PB), dt. 29.01.2008 in Appeal No. E/1270/2006-SM

Refund – Export goods – Refund claimed on inputs used in export goods – Refund denied in impugned order holding stainless steel utensils exempted and credit not admissible on inputs – Rule 5 of Cenvat Credit Rules, 2004 providing for refund of Cenvat credit on export of goods – Sub rule (5) of Rule 6 ibid rendering other provisions therein inapplicable in case of export goods – CBEC Manual of Instructions providing for input stage rebate on both excisable and non-excisable goods – Manufacturer entitled to credit on inputs used in export goods, whether dutiable or exempted – Documents constituting proof of export produced – Impugned order set aside – Rules 5 and 6 ibid [paras 3,8,9,10]

4.5 The applicants also states that the Notification 21/2004-CE is applicable to excisable goods, exempted goods as well as non-excisable goods. The non-excisable goods are those export goods which are not covered under Central Excise Tariff. In the instant case, the export goods are considered as non-excisable goods. Therefore the benefit of notification 21/2004-CE is eligible to us. However the procedure to be followed is not complied by us and the same may not be considered as statutory requirement for claiming rebate of duty on inputs used for export of goods.

5. Personal hearing was scheduled in this case on 5.3.13 & 27.6.13. Hearing held on 5/3/13 was attended by Shri R.R. Dave, Consultant on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government notes that finished goods viz. Paclitaxel Injection (of different strength) containing alcohol is exported. The said product is not a excisable product and therefore comes under the jurisdiction of State Excise authorities. Applicant has filed rebate claim of duty paid on inputs used in the manufacture of said exported non-excisable goods. The original as well as appellate authority has not allowed the said claim on the ground that the export product is non-excisable and applicant has not followed procedure /condition laid down in Not. No. 21/04-CE(NT) dated 6.9.2004. Applicant has now filed revision application on the grounds stated in para 4 above.

8. Government notes that applicant has pleaded that input rebate is admissible in their case even if they have exported non-excisable goods and the procedure laid down in Not. No. 21/04-CE(NT) dated 6.9.2004 is not applicable to non-excisable products.

8.1 In this regard, Government notes that the governing statutory provision for granting rebate of duty is Rule 18 of CER 2002 which read as under :-

"Rule 18. Rebate of Duty - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

As per said rule, the Central Government may, where any goods are exported, by notification, grant, rebate of duty paid on materials used in the manufacture or processing of such goods and rebate shall be subject to such condition or limitations if any, and fulfillment of such procedure as may be specified in the Notification. It is quite clear that rebate of duty paid on materials is to be granted under rule 18 of CER 2002 read with Not. No. 21/04-CE(NT) dated 6.9.2004 issued under said rule. Applicants argument that Not. No. 21/04-CE(NT) dated 6.9.2004 is not applicable to

export of non-excisable product is erroneous and not correct. In this case, applicant has not followed the statutory provision of Not. No. 21/04-CE(NT) dated 6.9.2004 which is admitted by him and therefore input rebate claim is not admissible.

8.2 As regards the admissibility of input rebate of duty paid on materials used in manufacture of exported non-excisable goods, the position is clarified in para 1 of Part V of Chapter 8 of CBEC Central Excise Manual of Supplementary Instruction. The said para is reproduced below for proper understanding of issue :-

"Part V

1. *Introduction*

1.1 *The Government has, by Notification No. 21/2004-CE (NT) dated 6.9.2004 (hereinafter referred to as the 'said notification') allowed rebate of whole of the duty paid on excisable goods, which are in fact materials or inputs for manufacture or processing of other goods, on their exportation out of India, to any country except Nepal and Bhutan, to be paid subject to the condition and the procedure specified in the above-mentioned notification.*

1.2 *It may be noted that in rule 18 and in said notification, expression 'export goods' has been used. It refers excisable goods (dutiabale or exempted) as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not."*

It is clearly mentioned above para 1.2 that in the said notification No. 21/04-CE(NT) expression 'export goods' has been used and it refer to excisable goods (dutiabale or exempted) as well as non-excisable goods. Thus the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not.

In this case, applicant has exported goods under supervision of state excise authorities. So it is not known whether such benefit of input rebate on export of said non-excisable good is availed by applicant from State Government or not.

8.3 Applicant has cited the case law in the case of Medispan Ltd. 2004 (178) ELT 848 (Tri-Chennai). The decision relates to availment of cenvat credit in case exempted

exported goods. Similarly in other case of Punjab Stainless Steel Industries 2008 (226) ELT 587 (Tri-Del) the issue regarding refund of cenvat credit under rule 5 of CCR 2004 is involved. Since the facts of these cases are different, the ratio of said decision cannot be made applicable to this case. Since the applicant has not followed the provisions of Not. No. 21/04-CE(NT) dated 6.9.2004, the input rebate claim is rightly held inadmissible.


9. In view of above position, Government do not find any legal infirmity in the impugned orders and therefore upholds the same.
10. The revision application is rejected being devoid of merit.
11. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Intas Pharmaceuticals Ltd.
Plot No. 457-458,
Village Matoda, Tal. Sanand,
Ahmedabad


Att-entd:


(शगवत शर्मा/Shagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/NEW Delhi

Order No.874/13-Cx dated 09.07.2013

Copy to:

1. Commissioner of Central Excise Ahmedabad-II, Custom House, Navrangpura, Ahmedabad – 380009.
2. Commissioner of Central Excise (Appeals-I), Central Excise Bhavan, 7th Floor, Near Polytechnic, Ambawadi, Ahmedabad – 380015.
3. The Assisant Commissioner of Central Excise, Division-IV, Ahmedabad-II, Vidyalaya Chambers, Paldi Cross Roads, Ahmedabad – 380 009.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy


(B.P. Sharma)
OSD(Revision Application)

