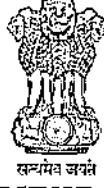


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**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

F. NO. 198/53/2016-RA / 4597

Date of Issue: 07.10.2022

ORDER NO. 953/2022-CX(WZ) /ASRA/MUMBAI DATED 03.10.2022 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.

- Applicant : Commissioner of Central Excise, Thane – II  
Commissionerate, 4<sup>th</sup> Floor, Navprabhat Chambers,  
Ranade Road, Dadar (West),  
Mumbai – 400 028.
- Respondent : M/s Panacea Biotech Limited,  
B-1 Extn., / G-3, Mohan Co-op. Indl. Estate,  
Mathura Road, New Delhi – 110 044.
- Subject : Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
SK/60/Th-II/2015 dated 04.11.2015 passed by the  
Commissioner of Central Excise (Appeals), Mumbai – I.

**ORDER**

The subject Revision Application has been filed by the Department (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 04.11.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai - I. The said Order-in-Appeal disposed of an appeal filed by M/s Panacea Biotech Limited, New Delhi, (here-in-after referred to as 'the respondent') against the Order-in-Original No. 91/08-09 (Rebate) dated 08.05.2008 passed by the Assistant Commissioner, Central Excise, Palghar Division, Thane – II Commissionerate which in turn had rejected rebate claim of the respondent amounting to Rs.12,556/-.

2. Brief facts of the case are that the respondent, a merchant exporter, filed a rebate claim in respect of the duty paid on goods exported by them under Rule 18 of the Central Excise Rules, 2002 (CER). The same was rejected by the original authority for the following reasons:-

- the goods exported by the respondent was received by them from M/s Hetero Drugs Limited, Bhiwandi vide invoice dated 09.04.2007, however, these goods were received by M/s Hetero Drugs Limited from the manufacturer M/s Neon Laboratories, Palghar by an invoice bearing a subsequent date, viz. 11.04.2007; and this raised a doubt as to whether the respondent had actually exported the goods as claimed by them;
- the Shipping Bill / Bill of Lading did not mention the Batch number of the goods;
- the respondent had failed to submit copies of the ARE-1s in respect of the export consignment;

Aggrieved, the respondent preferred an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal allowed the same and held the respondent to be eligible to the rebate claimed by them. Aggrieved, by the decision of the Commissioner (Appeals), the applicant Department has preferred the subject appeal on the following grounds:-

- (a) The Commissioner (Appeals) had failed to discuss the discrepancy in the dates in the invoices under which the goods were manufactured/supplied to the respondent;
- (b) CBECs Central Excise Manual specifies that the ARE-1 is an important document and that the respondent had failed to submit the same;
- (c) The Commissioner (Appeals) had incorrectly placed reliance on Circular No.294/10/94-CX dated 30.01.1997 as the Assistant Commissioner had found that it could not be established that it was the duty paid goods that were actually exported in the absence of ARE-1; further the respondent had failed to intimate the jurisdictional Range Superintendent, as required by Circular No.2/75 dated 22.01.1975, as to where they had stored the goods to be exported, as they had not exported the goods directly from the factory of manufacture;
- (d) Reliance was placed on the decision of the Allahabad High Court in the case *M/s Vee Excel Drugs & Pharmaceuticals P. Ltd. Vs UOI [2014 (305) ELT (100) (All)]* to hold that ARE-1 was obligatory;

In light of the above, the applicant has stated that the impugned Order-in-Appeal is not proper and legal and hence prayed that the impugned Order-in-Appeal be set aside and the order of the original authority be restored. They have also filed an application for condonation of delay for the delay of eight days in filing the present Revision Application.

3. The respondent vide their submissions in response to the subject Revision Application have submitted the following;

- (a) The applicant Department had failed to file an application for the condonation of delay and hence time barred; that the application filed had failed

to mention the amount demanded; that the amount involved was small and not likely to affect subsequent matters on the same issue; that there was no authorization by the Principal Commissioner to file the present application; that they had received the rebate amount after seven years; that the Joint Secretary (RA) was not competent to decide revision cases; the Commissioner (Appeals) had referred to several cases and had also found that there was enough evidence to establish that there was sufficient evidence on record to establish that the duty paid goods had actually been exported; that the decision relied upon by the Department had been distinguished by the Hon'ble Tribunal in the case of *Broadways Overseas Ltd vs CCE, Jalandhar* [2018 (363) ELT 307 (Tri.Chan.)] on the basis of facts; that the reason given by the original authority, that the batch number did not tally, was too trivial and superficial to deny the rebate claim; they finally requested that the subject Revision Application be dismissed and requested that be granted a personal hearing in the matter.

4. Personal hearing in the matter was granted to both, the applicant and the respondent on 16.06.2022, 30.06.2022 and 28.09.2022. No one appeared on behalf of the applicant Department. Shri T.R. Rustogi, Consultant, appeared on 30.06.2022 online on behalf of the respondent. He submitted that the only issue was non-submission of ARE-1 and stated that minor procedural infraction cannot take away their substantive right of rebate when the export of duty paid goods is not in doubt and requested to maintain the Order of the Commissioner (Appeals).

5. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Order-in-Original 08.05.2008 and the impugned Order-in-Appeal. Government finds that there is a minor delay of eight days in filing of the present application, Government condones the same as it is within the period condonable by the Revisionary Authority.

6. Government finds that the issue involved in the present case is to decide whether the impugned Order-in-Appeal was proper in holding that the infractions, pointed out and relied upon by the original authority to reject the claims of the respondent, were procedural. Government notes that non-submission of the original copy of the ARE-1 was one of the grounds on which the original authority had rejected the rebate claims of the respondent. Further, Government finds that the primary grounds on which the present application has been preferred by the Department is that the original authority could not establish that the goods which were exported were the same on which duty was paid by the original manufacturer.

7. Government notes that a doubt was raised as the invoice of the manufacturer bore a later date than the date of invoice of the supplier; Government notes that business practices could vary and there could be such practices which could be peculiar to a particular industry at the relevant period, giving rise to such situations; which the Government finds cannot be held against an exporter. Government finds that substantial benefit like rebate cannot be denied to an exporter on the basis of a doubt which is not backed by evidence to indicate any misdemeanor on the part of an exporter. Further, Government finds that the original authority has held that the Shipping Bill/Bill of Lading did not mention the batch number of the goods exported and hence it was not possible to establish that the goods exported were the same goods on which duty was paid. Government notes that the respondent has submitted that the 'Packing list' filed with these documents indicated the 'Batch number' of the goods exported; in this context Government observes that 'Packing List' is a mandatory document while filing the above export documents and it is this document that usually indicates the particulars like 'Batch number' etc., of the goods being exported. Given this fact, Government does not find any merit in the finding of the original authority that the Shipping Bill/Bill of Lading did not indicate the 'Batch number', as the same could have been easily verified from the 'Packing List' accompanying such documents. Government finds that the

respondent, while replying to the notice issued to them, had stated that the batch number "HV-0105" had been correctly mentioned in the 'Packing List' submitted by them. As regards the same being mentioned as "HV 105" on the Export Invoice, Government is in agreement with the findings of the Commissioner (Appeals) that the same appeared to be a typographical error and hence in nature of technical error not relevant to deciding the instant rebate claim. Thus, Government finds that there was enough material on record for the original authority to determine that the goods exported were the goods on which duty was paid.

8. Further, as regards the non-submission of ARE-1, Government finds that reliance of the applicant Department on the CBEC Central Excise Manual to submit that the ARE-1 was an obligatory document, to be incorrect, as it has been clarified by the Board that an ARE-1 was to facilitate an officer examining the rebate claim to determine that the duty had been paid on the goods which were exported; such instructions cannot be construed to hold that ARE-1 is an obligatory document to be submitted by an exporter. As discussed above, the respondent in this case had provided the original authority with the documents, viz., the Invoice which indicated the duty paid nature of the goods in question, its batch number; the Invoice under which they received possession of the goods and the Shipping Bill/Bill of Lading, Packing List etc., under which the same were exported. Government finds that these documents were good enough for the original authority to determine that the goods exported were the goods on which duty was paid in the first place. Further, the submission that the respondent had failed to intimate the jurisdictional Superintendent as required by Circular no.2/75 dated 22.01.1975, Government finds that the same will not have any application here as there is no allegation that the goods were not cleared in the original packing provided by the manufacturer who paid duty on the same. Government finds that the Commissioner (Appeals) has correctly relied on several judicial pronouncements of the higher Courts and instructions

issued by the Board vide Circular No.294/10/94-CX dated 30.01.1997 to decide the case in favor of the respondent.

9. Government finds that the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that rebate claimed cannot be rejected on the ground of procedural infractions. Government finds the non-submission of the original copy of the ARE-1s in this case is a procedural lapse and rebate cannot be denied when other documents establishing the export of the goods and its duty paid nature are available on record.

10. In view of the above, Government does not find any infirmity with the impugned Order-in-Appeal dated 04.11.2015 and upholds the same. The Revision Application is rejected.

*Shrawan*  
30/10/22  
(SHRAWAN KUMAR)

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

ORDER No. 953/2022-CX (WZ) /ASRA/Mumbai dated 3.10.2022

To,

The Pr. Commissioner of CGST & Central Excise,  
Palghar Commissionerate, 5<sup>th</sup> floor, CGST Bhavan,  
Plot no.24-C, Bandra Kurla Complex,  
Bandra (E), Mumbai - 400 051.

Copy to:

1. M/s Panacea Biotech Limited, B-1 Extn., / G-3, Mohan Co-op. Indl. Estate, Mathura Road, New Delhi - 110 044.
2. The Commissioner of Service Tax (Appeals), Mumbai - I, Meher Building, Dadi Seth Lane, Chowpatty, Mumbai - 400 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. ✓ Notice Board.