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SPEED POST

F. No. 195/385-451/2014-R.A.
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 4.11.2018

ORDER NO. 532-598/18-CX **dated** 3-10-**2018** OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R.P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

SUBJECT	:	Revision Application filed under Section 35EE of Central Excise Act, 1944, against the Order-in-Appeal No. CHD-EXCUS-000-APP-321 to 387-14-15 dated 30.09.2014, passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh.
APPLICANT	:	M/s. Torrent Pharmaceuticals Ltd.
RESPONDENT	:	The Commissioner of Central Excise, Chandigarh - I

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ORDER

Revision applications Nos. 195/385-451/2014 – R.A. dated 26.12.2014 have been filed by M/s. Torrent Pharmaceuticals Ltd., Baddi, Himachal Pradesh(hereinafter referred to as the applicant) against the Order-in-Appeal Nos. CHD-EXCUS-000-APP-321 to 387-14-15 dated 30.09.2014, passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh, whereby the applicant's appeals filed before the Commissioner(Appeals) against the Orders-in-Original have been rejected.

2. The brief facts of the case are that the applicant had filed inputs stage rebate claims under Notification No. 21/2004 – CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise rules, 2002. But these were rejected by the jurisdictional Assistant Commissioner on the ground that the applicant had exported free samples having no market value. The applicant's appeals filed before the Commissioner(Appeals) were also rejected upholding the decision of the adjudicating authority.

3. The revision applications are filed mainly on the grounds that the market value of the exported free samples was Rs.5,98,226/- as per their assessment, the value was more than the amount of rebate claim filed by them, Central Excise duty was also paid on the said value and Notification No. 21/2004 – CE(NT) dated 06.09.2004 does not have any condition similar to the condition 2(e) of Notification No. 19/2004 – CE(NT) dated 06.09.2004 as per which the market price of the goods should not be lesser than amount of rebate of duty.

4. The personal hearing was held on 05.04.2018 and it was availed by Shri S.J. Vyas, Advocate, on behalf of the applicant who reiterated the above mentioned grounds of revision. He also placed reliance on C.M.C. (India) Pvt. Ltd. Vs. Union of India, 1994 (71) ELT 11 (GUJ), decided on 27.06.1991 in addition to the case laws already cited in the revision application. However, no one availed personal hearing for the respondent.

5. The Government has examined the matter and it is observed there is no dispute that the rebate of duty was claimed by the applicant in respect of the inputs used in the export of free samples for the Pharmaceuticals products for which the governing Notification No. is 21/2004 – CE(NT) dated 06.09.2004. Whereas the rebate claims have been dealt with and rejected by the lower authorities with reference to condition 2(e) of Notification No. 19/2004 – CE(NT) dated 06.09.2004 even when it is not applicable for the purpose of examining the admissibility of rebate of duty in respect of inputs. By virtue of Para 5 of Notification No. 21/2004 – CE(NT) the procedures specified in Notification No. 19/2004 – CE(NT) are certainly made applicable to Notification No. 21/2004 – CE(NT), but it is evident from this para itself that the conditions and limitations specified under Para 2 of Notification No. 19/2004 – CE(NT) are not relevant in the context of Notification No. 21/2004 – CE(NT) as the said Para 5 is conspicuously silent with regard to following of conditions of Notification No. 19/2004 – CE(NT) which are specified at Sl. No. (a) to (h) of Para 2 and procedures are prescribed separately in Para 3. Therefore, while Para 5 of Notification No. 21/2004 – CE(NT) expressly provides for following of procedure laid down in of Notification No. 19/2004 – CE(NT), it does not have any

reference to the conditions and limitations stipulated in Para 2 of Notification No. 19/2004 – CE(NT) from which it is explicit that the conditions stipulated in Para 2 of Notification No. 19/2004 – CE(NT) including the condition in Para 2(e) as per which the Indian market price of the excisable goods at the time of export should not be less than the amount of rebate of duty claimed is not applicable under Notification No. 21/2004 – CE(NT) and accordingly its application by the lower authorities for rejection of the rebate claims of the applicant is completely erroneous. The Government of India's Order No. 386/2010 – CX dated 23.03.2010 in the case of M/s. Ranbaxy Laboratory Ltd. is also not found relevant for the present proceedings as in the said case the issue was regarding admissibility of rebate of duty in respect of the exported goods governed by Notification No. 19/2004 - CE(NT) and it was not in respect of inputs to be determined under Notification No. 21/2004 – CE(NT) as is in the present case. Therefore, the Assistant Commissioner as well as the Commissioner (Appeals) have wrongly placed reliance on the above order to confuse the whole matter and deny the rebate of duty to the applicant on erroneous premise. Besides above, the Commissioner (Appeals) has laid lot of stress on Para 1.5 of Part V of chapter 8 of CBEC's Manual to reject the applicant's appeal which provides that the market price of the goods should not be less than rebate amount. But the Government finds enormous substance in the plea of the applicant that the free samples were free only for the foreign customers and not from the Indian market point of view. It is corroborated by the fact that they had paid the Central Excise duty by taking a certain value and the duty paid thereon was accepted by the department also. So even when no consideration was received from the foreigner buyers in respect of such free samples, there is no basis in saying that the exported

samples did not have any value in the Indian market. Further the said condition at 2(e) of Notification No. 19/2004 – CE(NT) does not also provide that the "foreign remittance" in respect of the exported goods should not be lesser than the amount of rebate of duty claimed and it only say that the market value of exported goods should not be lesser than the rebate of duty. Moreover, to allay any confusion in this regard, the condition in Para 2(e) has been modified from 01.03.2016 to make it further clear that the "Indian market price of the excisable goods at the time of exportation should not be lesser than the amount of rebate of duty." Therefore, the Indian market value of the exported goods is only relevant for Notification No. 19/2004 – CE(NT) and not the foreign remittance. Since Indian market price of the exported free samples was undisputedly Rs.5,98,226/- in this case, the condition specified in Para 2(e) of Notification No. 19/2004 – CE(NT) is not attracted in this case. Accordingly, there is no violation of Para 1.5 of Part V of chapter 8 of CBEC's Central Excise Manual in this case. Moreover, there is no legal basis for this condition in the manual as no such condition is stipulated in Notification No. 21/2004 – CE(NT) or Rule 18 of Central Excise Rule as discussed above in detail. As regards not receiving any export proceeds in respect of free samples, no condition is found specified in Notification No. 21/2004 – CE(NT) or even 19/2004 – CE(NT) providing that foreign remittance of export proceeds shall be required before sanctioning of a rebate claim.

6. Considering the above discussed factual and legal aspect of this case, the Government is convinced that rebate of duty under Notification No. 21/2004 – CE(NT)

has been erroneously refused to the applicant by the lower authorities and, therefore, the Order –In-Appeal deserves to be set aside.

7. Accordingly, the Order-in-Appeal is set aside and the revision applications are allowed.

3.10.18

(R.P. Sharma)
Additional Secretary to the Government of India

M/s. Torrent Pharmaceuticals Ltd.,
Village Bhud, Makhnu – Majra,
Tehsil – Nalagarh, Baddi, District:Solan,
Himachal Pradesh.

GOI ORDER NO. 532-598/18-Cx **CX dated** 3-10-**2018**

Copy to:-

1. The Commissioner of Central Excise,Chandigarh – I, C.R. Building, Plot No. 19, Sector – 17C, Chandigarh – 160 017.
2. The Commissioner of Central Excise(Appeals), Chandigarh – I, C.R. Building, Plot No. 19, Sector – 17C, Chandigarh – 160 017.
3. The Deputy/Asstt. Commissioner of Central Excise, Division Shimla, Chandigarh – I
4. Mr. S.J. Vyas, Advocate, C- 4, Jay Apartments, Opp. Azad Society, Ambawadi, Ahmedabad – 380 015.
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED

(Debjit Banerjee)
Sr. Technical Officer(R.A. Unit)