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SPEED POST



F.No.195/538-539/2016-RA(CX)
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.....

Order No. 650-651/2018-CX dated 6-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944 against the orders-in-appeals No. 227-228/CE/DLH/2016 dated 22.03.2016, passed by the Commissioner (Appeals-1), Central Excise, C.R. Building, I.P.Estate, New Delhi.

Applicant : M/s Belco Pharma, Bahadurgarh.

Respondent : Commissioner of Central Goods & Service Tax, Rohtak.

ORDER

Two Revision Application have been filed by M/s Belco Pharma, 515, Industrial Estate, Bahadurgarh-124507(Haryana) (hereinafter referred to as the applicant) against the Orders-in-Appeal No. 227-228/CE/DLH/2016 dated 22.03.2016, passed by the Commissioner of Central Excise (Appeals-I), C.R.Building, I.P.Estate, New Delhi, whereby the applicant's appeals filed against the Original Adjudicating Officer's orders have been rejected.

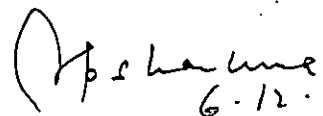
2. The above revision applications are filed mainly on the ground that the rejection of their appeal and upholding of the order of the Original Adjudicating Authority by the Commissioner (Appeals) for the reason that the export proceeds in respect of the exported goods have not been realised is erroneous as BRC is not a relevant document for sanctioning of rebate of duty.

3. A personal hearing was held in this case on 17.09.2018 and it was availed by Shri Kartikey Kulshrestha, Advocate, on behalf of the applicant. During the hearing Shri Kulshrestha produced a synopsis/compilation of case laws as discussed below to support their Revision application.

4. The Government has examined the matter and it is observed that a amount of the rebate of duty of Rs. 17,17,970/- was rejected mainly on the ground that the BRCs were not produced as per CBEC Board's Circular No. 354/70/97 dated 13.11.1997. But the Government has found that even the above Circular does not specify that for sanctioning of rebate of duty the BRC is an essential document. Moreover, in Rule 18 of Central Excise Rules, 2002 or Notification No.19/2004-C.E.(N.T.) dated 6.9.2004 it is nowhere stipulated that rebate of duty will be sanctioned only if the BRC is produced along with the Rebate claim. In fact in these relevant legal provisions it is

nowhere envisaged that BRC will have to be produced either before or after grant of rebate of duty on the exported goods. Even Excise Manual of Supplementary Instruction, 2005 does not mention any such condition. Even the Hon'ble Allahabad High Court in its two decisions in the case of Polyplex Corporation Ltd. Vs. Joint Secretary (Finance) & Others, reported as 2014-TIOL-605-HC-AllCX, and in the case of M/s Jubilant Life Sciences Limited Vs. Union of India and others, Writ No.1484 of 2011, dated 11.08.2016 it has been categorically held that the rebate of duty cannot be denied on the basis of non-production of BRC and by following the Circular No. 354/70/97-CX dated 13.11.1997. Accordingly, rebate of duty is admissible to applicant since all the conditions of rule 18 and Notification No. 19/2004-C.E.(N.T.) have been submitted and the Government agrees with the contention of the applicant that the Commissioner (Appeals) has committed an error by upholding the Order-in-Original.

5. In view of the above discussions, the Order-in-Appeal No. 227-228/CE/DLH/2016 dated 22.03.2016 is set aside and the revision application is allowed.


6.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s Belco Pharma, 515,
Industrial Estate, Bahadurgarh-124507
(Haryana)

Order No. 650-657/18-Cx dated 6-12-2018

Copy to:-

1. Commissioner of Central Goods & Service Tax, Rohtak.
2. Commissioner of Customs & Central Excise (Appeals-I), C.R.Building, I.P.Estate, New Delhi-110001.
3. The Assistant Commissioner(Tech.) Central Excise Commissionerate, Rohtak.
4. PA to AS (Revision Application)
5. Guard File

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER (Revision Application)