

REGISTERED
SPEED POST



F.No. 195/1120/12-RA-CX
195/277/15-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... 13/12/18

ORDER NO. 665/166/2018-CX dated 7-12-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, 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 the Orders-in-Appeal No. 132-ST/MRT-II/12 dated 29.05.2012 and HPU/EXCUS-000/APPEALS-I/80/2015-16 dated 18.06.2015, passed by the Commissioner of Central Excise (Appeals), Meerut.

APPLICANT : M/s Jubilant Life Sciences Ltd., Noida

RESPONDENT : The Commissioner of CG & ST., Noida

ORDER

Two Revision Applications Nos. 195/1120/12-RA-CX dated 30.08.2012 and 195/277/15-RA dated 08.09.2015 have been filed by M/s Jubilant Life Sciences Ltd., Noida (hereinafter referred to as the applicant) against two Orders in Appeal No. 132-ST/MRT-II/12 dated 29.05.2012 and HPU/EXCUS-000/APPEALS-1/80/2015-16 dated 18.06.2015, passed by the Commissioner of Central Excise (Appeals), Meerut.

2. Brief facts leading to the filing of the Revision Application are that the applicant had filed rebate claims under Rule 18 of Central Excise Rules 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 which were sanctioned beyond the period of three months from the date of receipt of application. However, no interest was paid to the applicant by the Original Adjudicating Authority for the delay in sanctioning the same. On their appeal, the Commissioner (Appeals), vide his order O-I-A No. 132-ST/MRT-11/2012 dated 29.05.2012, allowed the interest of Rs. 416292/- but rejected the interest of Rs. 813023/- on the ground that the rebate of duty was delayed on account of late submission of several documents by the applicant himself. Vide his second O-I-A No. HPU/EXCUS-000/APPEALS-1/80/2015-16 dated 18.06.2015, the Commissioner (Appeals) rejected the applicant's appeal regarding payment of interest on Rs. 1284824/- on the ground that the applicant had immediately recredited the said amount of Rs. 2563492/- and thereby no financial loss was incurred by the applicant for the payment of the said amount under protest.

3. Personal hearing was held on 06.09.2018. Sh. J. Devarajan Senior Vice President (Indirect Tax) appeared for the applicant and Sh. Nitish

Karnataka Assistant Commissioner appeared for the respondent. Sh. Devarajan reiterated the grounds already pleaded in their Revision Application and requested that interest is payable under section 11BB of the Central Excise Act for the delayed ground of rebate of duty.

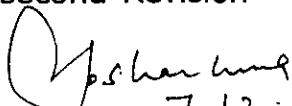
4. The Government has examined the matter and it is observed that Section 11BB unambiguously provides that interest is payable in the event of non-refunding of duty within 3 months from the date of receipt of application and it is clarified in Explanation-E in Section 11BB that where any order of refund is made by Appellate Authorities, order passed by Appellate Authority should be deemed to be an order passed under sub-section (2) of the Section 11B. Applying this legal mandate in regard to maintainability of interest Rs. 8,13,023/- whose rejection is upheld by the Commissioner (Appeals) vide his order dated 29.5.2012, the applicant has claimed to have filed the complete rebate claims on 18.12.2006 and thereafter they submitted various other documents and details as and when demanded by the concerned authorities. Finally the rebate claims were found maintainable and the rebate of duty was sanctioned as per claims filed by the applicant. Thus, even when some of the documents were furnished later on, the claims will be considered to have been filed on 18.12.2006 itself and it cannot be accepted that the date of filing will be counted from the date of submission of the last document demanded by the departmental authorities. Even documents were demanded in piece meal on different occasions and some of documents were not even essential for sanctioning rebate claims in time. Thus, the applicant cannot be solely blamed for delayed submission of various documents. When the date of 18.12.2006 is taken as the date of filing of the rebate claims in this case, it cannot be denied that the rebate claims have been sanctioned

in these cases beyond three months only and accordingly interest is payable after lapse of three months period in terms of section 11BB of the Central Excise Act as discussed above. Therefore, the Commissioner (Appeals) has erroneously passed the O-I-A dated 29.5.2012 to the above extent by denying the interest of Rs. 813023/-.

5. As regards rejection of interest on the amount of Rs. 1284824 vide Order-in-Appeal dated 18.06.2015, the Government finds that the Revision Application is vague and it does not elaborate properly as to how the interest is payable to the applicant when there is no allegation that any rebate claim was delayed by the rebate sanctioning authority. On the contrary, it appears from the facts discussed in the Revision Application that rebate claims had been sanctioned to the applicant in time and subsequently an amount of Rs. 1284824/- was sought to be recovered on the ground that it had been erroneously granted to the applicant. It is not clear from the Revision Application whether the recovery of the said amount was confirmed by the original adjudicating authority and upheld by the appellate authority or it was set aside by them later on. Thus, the error committed by the departmental authorities with regard to recovery of erroneously sanctioned rebate amount so as to attract interest liabilities for the revenue is not adequately explained in the Revision Application. Moreover, it is apparent from the Order-In-Appeal and the Revision Application itself that the amount of Rs. 1284824/- was paid by the applicant suo motu, albeit under protest, soon after they received a notice from the jurisdictional authority for recovery of erroneously sanctioned rebate claims of the said amount and the applicant recredited the equal amount in their CENVAT Credit Account which was apparently utilised for payment of duty on the excisable goods. Thus, the applicant has not made

out a clear case that they suffered any pecuniary loss due to any wrong action on the part of any departmental authorities in regard to rebate of duty of Rs. 1284824/-. Hence, the Government does not find any error in the order of the Commissioner (Appeals) dated 18.06.2015 whereby the interest has been rejected on the said amount.

6. In view of the above discussions, the Government set aside the O-I-A 132-ST/MRT-II/12 dated 29.05.2012, allows the Revision Application 195/1120/12-RA(Cx) dated 14.06.2012 and rejects the second Revision Application No. 195/2771/15-RA dated 8.9.2015.


7.12.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Jubilant Life Sciences Ltd.,
Plot No. 1-A, Sector 16-A, Noida (UP)

ORDER NO. CGS-76/2018-CX dated 7-12-2018

Copy to:-

1. The Commissioner of Central Goods & Services Tax Noida-I, C-56/42, Sector -62, Noida-201 307.
2. The Commissioner of Central Excise (Appeals), Meerut-II.
3. The Assistant Commissioner of Central Excise, Division Hapur.
4. PS to AS(RA)
5. Guard File.

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)

*Recd original copy
Kali Shu
Jubilant Life Sc. Ltd.
13/12/2018*