



F.No.195/928,929,945,946,947,990-995 & 996/13-RA(CX)
F.No.195/365-367/14-RA(CX)
F.No.195/37/2016-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... 13/12/18

Order No. 667-682/2018-CX dated 7-12-18 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. MRT/EXCUS/002/APP/94/13-14 dated 29.08.2013, MRT/EXCUS/002/APP/95/13-14, MRT/EXCUS/002/APP/97/13-14 dated 29.08.2013, MRT/EXCUS/002/APP/98/13-14 dated 29.08.2013, MRT/EXCUS/002/APP/99/13-14 dated 29.08.2013, MRT/EXCUS/002/APP/96,100,101,102,103,104/13-14 dated 29.08.2013, MRT/EXCUS/002/APP/112/13-14 dated 09.09.2013, MRT/EXCUS/002/APP/57/14-15 dated 11.09.2014, MRT/EXCUS/002/APP/65/14-15 dated 24.09.2014, MRT/EXCUS/002/APP/63/14-15 dated 23.09.2014 and HPU/EXCUS/000/APPL-I/395/15-16 dated 22.12.2015, passed by the Commissioner (Appeals) Meerut-I & II.

Applicant : M/s Jubilant Life Sciences Ltd., Gajraula

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

ORDER

The following Revision Applications have been filed by M/s Jubilant Life Sciences Ltd., Gajraula (hereinafter referred to as the applicant) against the Orders-in-Appeal, passed by the Commissioner of Central Excise (Appeals), Meerut-I & II, whereby the applicant's appeals filed against the Original Adjudicating Officer's orders have been rejected.

Sr. No.	Revision Application No. & date	Against Order-in-Appeal No. & Date
1	195/928/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/94/13-14 dated 29.08.2013
2	195/929/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/95/13-14 dated 29.08.2013
3	195/945/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/97/13-14 dated 29.08.2013
4	195/946/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/98/13-14 dated 29.08.2013
5	195/947/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/99/13-14 dated 29.08.2013
6	195/990-995/13-RA dt. 25.10.13	MRT/EXCUS/002/APP/96,100,101,102,103,104/13-14 dated 29.08.2013
7	195/996/13-RA dt. 29.11.13	MRT/EXCUS/002/APP/112/13-14 dated 09.09.2013
8	195/365/14-RA dt. 10.11.14	MRT/EXCUS/002/APP/57/14-15 dated 11.09.2014
9	195/366/14-RA dt. 10.11.14	MRT/EXCUS/002/APP/65/14-15 dated 24.09.2014
10	195/367/14-RA dt. 10.11.14	MRT/EXCUS/002/APP/63/14-15 dated 23.09.2014
11	195/37/16-RA dt. 11.03.16	HPU/EXCUS/000/APPL-I/395/15-16 dated 22.12.2015

2. The above revision applications are filed mainly on the ground that recovery of any excess rebate of duty confirmed by the Original Adjudicating Authority and upheld by the Commissioner (Appeals) for the reason that lesser amount of export proceeds was received in comparison to higher amount of FOB declared in the ARE-1s is not maintainable in any of the cases as BRC is not a relevant document for sanctioning of rebate of duty and they had been sanctioned rebate of duty of that much amount only which was actually paid by them on the exported goods.

3. A personal hearing was held in this case on 06.09.2018 and it was availed by Shri J. Devarajan, Sr. V.P. (Indirect Tax), on behalf of the applicant and Shri Nitish Karnatak, Assistant Commissioner, Div-I, CGST, NOIDA for the respondent. During the hearing Shri Devarajan mainly reiterated the above stated grounds of revision in

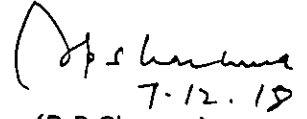
general and even informed that even when BRC is not an essential document they had furnished all BRCs in all the cases to the Divisional Authorities. With regard to R.A. No. 195/994/13-RA he contended that they have already paid CVD on the re-imported goods which were rejected by their foreign buyer and, therefore, rebate of duty availed by them is not recoverable from them.

4. The Government has examined the matter and it is observed that in almost all above mentioned cases part amount of the rebate of duty already granted to the applicant is ordered by the lower authorities mainly on the ground that the actual export proceeds realized by the applicant as per the BRCs is lesser than the value of the exported goods shown in the export documents like ARE-1. Thus, the rebate of duty is sought to be linked with the Bank Realization Certificate and not to the actual duty amount paid by the applicant on the exported goods. But no authentic reason is given by the lower authorities in their Orders for supporting their action for recovery of rebate of duty amount in the above discussed situation on the basis of BRCs as in Rule 18 of Central Excise Rules, 2002 and Notification No.19/2004-C.E.(N.T.) dated 6.9.2004 it is nowhere stipulated that rebate of duty will be sanctioned or recovered later on by taking into account the amount of exported proceeds realized by the exporter as per BRC. 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 and thus the condition regarding production of BRC within 160 days from the date of sanction of rebate as specified in Circular no. 354/70/97-CX dated 13.11.1997 is not backed by any statutory provision. 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-AIICX, and the Allahabad High Court's Order dated 11.8.16 in the applicant's own case in Writ No.1484 of 2011 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, the Govt. agrees with the contention of the applicant that the Commissioner (Appeals) has committed an error by linking the recovery of rebate with the BRCs. Further, the above stated legal provisions in Rule 18 and Notification No.19/2004 unambiguously provide that the rebate of duty in respect of exported goods is to be paid equivalent to the actual duty paid thereon and there is no provision to reduce the rebate of duty in the event of receiving lesser export proceeds as per the BRC. Since in all the above mentioned cases there is no allegation that rebate of duty was paid higher than the amount of excise duty paid on the exported goods to the applicant, the Government is convinced that there is no valid basis to say that excess rebate of duty was earlier paid and accordingly no amount is recoverable from the applicant. In R.A.No.195/994/13-RA the recovery of rebate of duty is founded on the ground that the exported goods were subsequently rejected and same were re-imported by the applicant and, therefore, the benefit of rebate of duty was not available to the applicant. But the applicant has claimed that when they re-imported the rejected goods CVD was paid by them on the re-imported goods. As per Regulation 8 of the Foreign Exchange (Export of Goods and Services) Regulations, 2000, the realization of the export value in respect of such re-imported goods shall be deemed to have been realized and accordingly there is no force in the Department's case that the goods were not exported in this particular case. The applicant has also placed reliance on Commissioner (Appeals)'s OIA No.127-CE/APPL/M-II/2014/388 dated 30.1.15 relating to the applicant itself wherein it is

subsequently held that the rebate in respect of such rejected exported goods is admissible. The Government has examined the said OIA and it is found true that rebate of duty is held to be admissible by the Commissioner (Appeals) in the above Order involving identical circumstance wherein the goods were earlier exported but were subsequently re-imported on being rejected by the foreign buyer. Accordingly, the rebate of duty cannot be denied in the case covered by the aforesaid R.A.No.195/994/13-RA also.

5. In view of the above discussions, the OIAs mentioned in para (1) above are set aside and the revision applications mentioned in the same para (1) are allowed.


7-12-18

(R.P.Sharma)

Additional Secretary to the Government of India

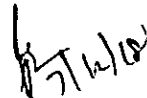
M/s Jubilant Life Sciences Ltd.,
Bharatiyagram, Gajraula,
Distt. Amroha-244223

Order No.666-682/18-Cx dated 7-12-2018

Copy to:-

1. Commissioner of Central Goods & Service Tax, Dehradun, 'E' Block, Nehru Colony, Haridwar Road, Dehradun-248001
2. Commissioner of Customs & Central Excise (Appeals), Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut- 250 005.
3. Commissioner of Customs & Central Excise (Appeals), Meerut-II, Opp. CCS University, Mangal Pandey Nagar, Meerut- 250 005.
4. The Deputy Commissioner, Custom & Central Excise, 'E' Block, Nehru Colony, Haridwar Road, Dehradun-248001, Uttaranchal
5. PA to AS (Revision Application)
6. Guard File

ATTESTED



(Ravi Prakash)

OSD (Revision Application)

*Recd original chg.
held by
Jubilant Life Sc. Ltd.
13/12/2018*