

SPEED POST



F. No. 196/06/ST/2016-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. 06/03/23.

Order No. 09 /23-ST dated 06-03-2023 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application, filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, against the Order-in-Appeal No. 431 to 433/2015 (STA-II) dated 31.12.2015, passed by the Commissioner of Service Tax (Appeals-II), Chennai.

Applicant : M/s Planet Pharma Warehouse Pvt. Ltd., Chennai.

Respondent : The Commissioner of CGST & Central Excise, (North), Chennai.

ORDER

Revision Application No. 196/06/ST/2016-RA dated 11.05.2016 has been filed by M/s Planet Pharma Warehouse Pvt. Ltd., Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 431 to 433/2015 (STA-II) dated 31.12.2015, passed by the Commissioner of Service Tax (Appeals-II), Chennai. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 92, 93 and 94/2014 (R) dated 18.09.2014, passed by the Assistant Commissioner of Service Tax, Service Tax-III Division, Chennai.

2. Brief facts of the case are that the Applicant herein was exporting medicines through post and courier and claimed rebate of service tax paid on the taxable services received by them and used for export of goods, in terms of Notification No. 41/2012-ST dated 29.06.2012. The details are as under:

S. No.	Rebate claim for Rs.	For the period	Filed on
1	31,51,547/-	July, 2012 to September, 2012	12.02.2013
2	44,29,939/-	October, 2012 to December, 2012	19.06.2013
3	41,34,962/-	January, 2013 to March, 2013	12.07.2013

The rebate claims were rejected by the original authority, vide the aforesaid Order-in-Original dated 18.09.2014, on the grounds that the FIRC's had not been regularized and the Applicants had failed to submit the copies of shipping bills evidencing export of goods. Commissioner (Appeals), has vide the impugned Order-in-Appeal, upheld the aforesaid Order-in-Original.

3. The revision application has been filed, mainly, on the grounds, that production of FIRC's is not a pre-condition under Notification No. 41/2012-ST for sanction of rebate; that without prejudice, the FIRC's have since been regularized; that they had received similar refunds for earlier periods; that they had provided the details from post office giving consolidated fortnightly bill showing date wise postal charges and service tax charged; that in respect of courier exports, receipts containing details of export with airway bill references evidencing export of goods & service tax charged have been furnished; that, therefore, the rejection of the rebate claims is without any basis.

4. Personal hearing in the matter was scheduled on 23.01.2023, 13.02.2023, and 03.03.2023. In the personal hearing held on 13.02.2023, in virtual mode, Ms. Nidhi Nawal, Advocate appeared for the Applicant and requested for adjournment. In the personal hearing held, in virtual mode, on 03.03.2023, Ms. Pradnyali Deshpande, Advocate appeared for the Applicant and requested that Synopsis etc. emailed on

03.03.2023 may be taken on record. She reiterated the contents of the RA and submitted that since the regularised FIRC has been submitted the refund may be granted. No one appeared for the Respondent department on any of the dates fixed for hearing nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The rebate claims of the Applicant herein have been rejected on the grounds that the FIRCs evidencing realisation of export proceeds have not been regularised and that shipping bills etc. evidencing exports have not been furnished.

5.2 In respect of regularisation of FIRCs, the Applicants have, along with the revision application, furnished a copy of an endorsement dated 18.04.2016 from the AD Bank, i.e., DBS Bank Ltd., indicating realisation of export proceeds of USD 99,995/- with balance 'nil'. Therefore, it would appear that the FIRCs have been regularised by the AD Bank, after the original and appellate proceedings.

5.3 As regards the non-availability of shipping bills, the Commissioner (Appeals) has held in the matter as under:

"8. True, in respect of exports through couriers, they (courier) are required to file Shipping Bills. But, that does not prevent the appellant from obtaining copy of Shipping Bills from the courier and submit the same. In respect of exports through Post, PP declaration is required to be filed. However, the appellant have not submitted copy of those PP declaration. As per condition (f) of Notification where the rebate involved is less than Rs. 50/- rebate shall not be granted. In this case, the export of medicines are in small quantities and the service involved are courier services and post services. Thus whether the above condition is fulfilled and whether the foreign exchange involved on each export consignment is Rs. 500/- or less, as claimed by the appellant, are to decided on the basis of Shipping Bills/ regularized FIRCs etc., which the appellant have not submitted."

Therefore, the Commissioner (Appeals) has held that the copies of shipping bills are required so as to verify that the rebate involved in individual cases is not less than Rs. 500/- (appears to have been wrongly mentioned as Rs. 50/- by the Commissioner (Appeals)). This requirement is arising out of condition (j) in para 3 of the Notification No. 41/2012-ST dated 26.06.2012, which reads as under:

"(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed."

It would, therefore, appear that the requirement of shipping bills and PP declaration in respect of export by post has been found to be necessary by the Commissioner (Appeals) so as to verify that individual claims are not below the amount of Rs. 500/. It is, however, observed that the Applicants herein have furnished other documents, namely, the consolidated fortnightly bills from the post offices showing date wise postal charges and service tax charged and courier receipts from the courier companies containing details of exports airway bill references and service tax charged. Thus, in absence of shipping bills, the Applicants have submitted other corroborative evidence suggesting that with reference to these alternate documents the factum of export and payment of service tax can be verified. There is no requirement in the notification that these aspects have to be verified only with reference to the shipping bill. In this light, there is substance in the contention of the Applicants that the authorities below could have verified the rebate claims with reference to other corroborative evidence furnished by them.

5.4 As such, it will be in the interest of justice that the matter is remanded to the original authority for de-novo consideration after verification of regularized FIRCs and for consideration of corroborative evidence produced by the Applicants herein. It would be open to the original authority to, upon due verification, take a view regarding veracity and sufficiency of the documents/evidence produced.

6. The revision application is, accordingly, allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

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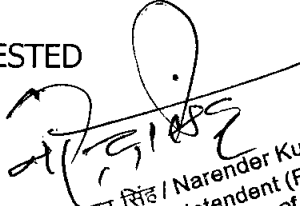
G.O.I. Order No. 09 /23-ST dated 06-03-2023

Copy to: -

1. The Commissioner of CGST & Service Tax, (North), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. The Commissioner of Service Tax (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai-600040.
3. Sh. A. Ramesh Kumar & M.N. Advocates, EA Chambers (Express Avenue), 5th Floor, No. 49 & 50L, Whites Road Royapettah, Chennai-600014.
4. PPS to AS (RA).
5. ✓ Spare Copy.
6. Guard File.
7. Notice Board.

ATTESTED


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