

SPEED POST



F.No. 195/49/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.. 14/12/21

Order No. 258/21-Cx dated 14-12-2021 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & 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 Order-in-Appeal No. 116/KOL-NORTH/KOL/2019 dated 29.04.2019, passed by the Commissioner of CGST & Central Excise, Kolkata Appeal-I.

Applicant : M/s Fresenius Kabi Oncology Ltd., Nadia, West Bengal.

Respondents : The Commissioner of CGST & CX, Kolkata North.

**ORDER**

A Revision Application No. 195/49/2019-RA dated 17.09.2019 has been filed by the M/s Fresenius Kabi Oncology Ltd, Nadia, West Bengal (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 116/KOL-NORTH/KOL/2019 dated 29.04.2019, passed by the Commissioner of CGST & Central Excise, Kolkata Appeals-I. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 19(R)/AC-KLY/17-18 dated 25.09.2017 passed by the Assistant Commissioner, Kalyani CGST & Central Excise Division, Kolkata North Commissionerate.

2. Briefly stated, the Applicant herein had exported excisable goods, namely, "Oxaliplatin" falling under Chapter sub-heading 28439012 of the Central Excise Tariff Act, 1985 under the cover of ARE-1 No. 035/FKOL/KLY-II/16-17 dated 29.09.2016 and filed rebate claim, amounting to Rs. 1,65,125/-, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate claim was rejected by the original authority on the grounds that the original and duplicate copies of ARE-1 do not bear the name and signature of the Customs authority certifying the export; that Shipping Bill number mentioned in Part B of the ARE-1 (original) does not match with the number of certified Shipping Bill submitted with the claim; and that the correction effected in Part B of the ARE-1 does not bear endorsement/signature of the customs authority. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the substantive benefit cannot be denied for procedural lapses; that there is no denial that export had taken place and duty was paid; that the ARE-1 had been accepted in support of payment of duty and it was not suggested by the department that the duty be reversed and the ARE-1 was not properly endorsed by the Customs authority; and that the certification of Customs official was required for the purpose

of confirmation in respect to the fact that goods had actually been exported, which is not denied in the present case.

4. Personal hearing, in virtual mode, was held on 13.12.2021. Sh. Sanjay Chakraborty, Sr GM appeared for the Applicant and reiterated the contents of the RA. He highlighted that the customs authorities had refused to authenticate the change in Shipping Bill No. mentioned on the ARE-1. Upon being asked, Sh. Chakraborty fairly admitted that there is no evidence available to prove this contention. No one appeared for the department nor any request for adjournment has been received.

5. The revision application has been filed with a delay, which is attributed to administrative and postal delays. Delay is condoned.

6. The Government has carefully examined the matter. The rebate claim has been rejected on the following grounds:

1. The Original and Duplicate copies of ARE-1 No. 035/FKOL/KLY-II/16-17 dated 29.09.2016 submitted by the appellant do not bear the name and signature of the Customs authority certifying the export of the impugned goods in compliance of terms and conditions laid down in Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended issued under Rule 18 of the Central Excise Rules 2002 read with Section 11B of Central Excise Act, 1944.

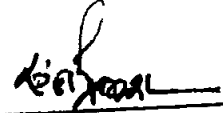
2. Shipping Bill No. mentioned in part B of the ARE-1(Original) does not match with no. of the certified bill submitted with the claim.

3. Correction effected in part B of ARE-1 does not bear endorsement/signature of the customs authority.

The Government observes that the requirement of mentioning the Shipping Bill No. on the ARE-1 is to correlate the goods removed for export from the factory gate with the goods that were actually exported. In the present case, it is not denied that the Shipping Bill No. mentioned in the part B of the original copy of the ARE-1 does not match with the Shipping Bill submitted along with the claim and that the correction

effected in part B of the ARE-1 to indicate the no. of the Shipping Bill (a copy of which has been submitted with the claim) instead of the Shipping Bill No. which is mentioned on the original copy of the ARE-1 has not been endorsed by the customs authority. Therefore, in the present case, it is not established that the goods which were removed for export against the subject ARE-1, upon payment of duty, and the goods which were actually exported are one and the same. The contention of the Applicant that the customs authorities refused to endorse the correction made on the ARE-1 is unsubstantiated in as much as, admittedly, there is no evidence to prove this contention. Other contentions including that the duty has been paid and the goods have actually been exported and, therefore, the rebate cannot be denied are of no help to the Applicant in absence of it being established that the goods removed for export on payment of duty were actually exported. As such, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is rejected.



(Sandeep Prakash)

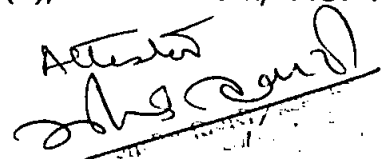
Additional Secretary to the Government of India

M/s Fresenius Kabi Oncology Ltd.,  
D-35, Industrial Area,  
P.O.- Kalyani, Dist-Nadia, West Bengal  
Pin Code: 741235.

Order No. 259/21-Cx dated 14-12-2021

Copy to:

1. The Commissioner of CGST & CX, Kolkata North Commissionerate, 2<sup>nd</sup> floor, GST Bhavan, 180 Shanti Pally, R.B. Connector, Kolkata-700107.
2. The Commissioner of CGST & Central Excise, Kolkata Appeal-I Commissionerate, GST Bhawan 180, Shantipally, Rajdanga Main Road, Kolkata 700107.
3. Assistant Commissioner of Central Tax, Kalyani CGST & CX Division, Kolkata North Commissionerate, B-12/13(S) & 14(S), Central Park, P.O. Kalyani, Nadia, West Bengal - 741235.
4. PA to AS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

Attested  
  
स.प्र.प्र.  
CGST & Central Excise  
राजस्व विभाग / Ministry of Revenue  
भारत सरकार / Government of India  
नई दिल्ली / New Delhi