

SPEED POST



F.No. 195/01/2020-RA
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: 16/12/21

Order No: ~~260~~/21-Cx dated 16-12-2021 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. CHD-EXCUS-001-APP-150-19-20 dated 01.10.2019, passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicant : M/s Theon Pharmaceuticals Ltd., Solan.

Respondent : The Commissioner of CGST, Shimla.

ORDER

A Revision Application No. 195/01/2020-RA dated 07.01.2020 has been filed by the M/s Theon Pharmaceuticals Ltd., Solan (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CHD-EXCUS-001-APP-150-19-20 dated 01.10.2019, passed by the Commissioner (Appeals), CGST, Chandigarh. The Commissioner (Appeals) has upheld the Order-in-Original No. 27/CE/JC/SML/2018-19 dated 31.12.2018 passed by the Joint Commissioner of Central Excise, Shimla, whereby the demand of Rs. 2,16,568/- has been confirmed under Section 11A of the Central Excise Act, 1944.

2. The facts leading up to the present revision application are that the Applicants herein were registered for manufacture and export of Pharmaceuticals Products falling under Chapter 30 of the Central Excise Tariff Act, 1985. They had filed 03 rebate claims, totally amounting to Rs. 2,16,568/-, of the duty paid on inputs used in the manufacture of exported goods, in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06.09.2004, which were sanctioned by the Assistant Commissioner, Central Excise Division, Baddi. Subsequently, during post audit, it was observed that the goods were cleared for export after expiry of 06 months from the date of removal from the factory, in contravention of para 5 of the said notification. Accordingly, a show cause notice dated 28.03.2018 was issued to the Applicants for demand and recovery of erroneously sanctioned rebate claims, under Section 11A of the Central Excise Act, 1944 along with applicable interest under Section 11AA *ibid*. The original authority, vide the aforesaid Order-in-Original dated 31.12.2018, confirmed the demand. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the lower authorities have erred in rejecting the rebate claim by strict interpretation of the Notification No. 42/2001-CE (NT); that, in the present case, the exports were made by the third party and the Applicants were not aware of the delay in export; that, subsequently, upon coming to know of the delay, they had requested the Assistant

Commissioner for extension of time which was allowed; that there is nothing in the notification to show that the time period cannot be extended retrospectively; and that the payment of central-excise duty and export of goods is not in dispute, as such, rebate was rightly sanctioned.

4. Personal hearing, in virtual mode, was held on 10.12.2021. Sh. Sunil Arora, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that delay in export is merely a procedural contravention that occurred due to circumstances beyond their control. As factum of export is not disputed, a lenient view may be taken and rebate may be granted. None appeared for the Respondent department. Upon the request of the Applicant, personal hearing was again held on 15.12.2021. Sh. Sunil Arora, Advocate appeared for the Applicant and stated that he wished to reiterate that there are several case laws holding that rebate should not be denied for procedural infractions. He also submitted that in terms of Notification No. 42/2001-CE (NT), the Assistant Commissioner is competent to extend time period of 06 months for export. Upon being pointed out that the Notification No. 42/2001-CE (NT) is issued under Rule 19, Sh. Arora confirmed that instant case is of rebate under Rule 18 and not that of export under bond in terms of Rule 19. None appeared for the Respondent department nor any request for adjournment has been received. Hence, the matter is taken up for disposal based on records.

5.1. The Government has examined the matter carefully. In the present case, the goods have been exported under claim of rebate in respect of duty paid on the inputs, in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06.09.2004. As per para 5 of the said Notification No. 21/2004-CE (NT), the goods shall be exported on the application in form ARE-2 and the procedure specified in Notification No. 19/2004-CE (NT) dated 06.09.2004 or in Notification No. 42/2001-CE (NT) dated 26.06.2001 shall be followed.

5.2 In the Notification No. 19/2004-CE (NT), the relevant condition 2(b) reads as under:

"(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;"

On the other hand, in Notification No. 42/2001-CE (NT), the condition 2 in para 1 reads as under:

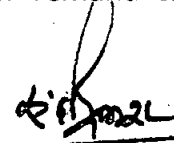
"2. that goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or Maritime Commissioner may in any particular case allow;"

5.3 It is the contention of the Applicant that the Assistant Commissioner had granted the permission for export beyond 06 months from the date of clearance from the factory in terms of aforesaid condition 2 of the Notification No. 42/2001-CE (NT). However, the original authority has disregarded the approval so granted by the Assistant Commissioner on the grounds of it being post-facto. On the other hand, the Commissioner (Appeals) has proceeded to decide the case on the basis of condition 2(b) of the Notification No. 19/2004-CE (NT) in which case the competent authority for extension of time is Commissioner. In this process, it is, however, not clear whether the Applicant had made the subject exports and claimed rebate by following the procedure under Notification No. 42/2001-CE (NT) or that under Notification No. 19/2004-CE (NT). In case, the Applicant had followed the procedure under Notification No. 42/2001-CE (NT), the Assistant Commissioner as the competent authority has extended the time period for export. Only objection of the original authority is that such permission has been granted on post-facto basis. The defence of the Applicant is that this being a case of third party export, they were not aware about the delay in export and the extension was solicited as soon as they got to know of the delay. The Government finds that there is no specific bar in the notification in respect of post-facto extension and, in the facts and circumstances explained by the Applicant, which are not disputed by the department, the

permission for extension of time period granted by the competent authority cannot be disregarded merely on the ground of it being post-facto. On the other hand, if the Applicant had followed the procedure under Notification No. 19/2004-CE (NT), the competent authority for extension of time was Commissioner and, in such a situation, the extension, in the present case, was not granted by the competent authority.

5.4 In these facts and circumstances, it would be in interest of justice that the matter is remanded to the original authority for verification whether the Applicant had followed the procedure under Notification No. 19/2004-CE (NT) or under Notification No. 42/2001-CE (NT), either of which could have been followed in terms of para 5 of the Notification No. 21/2004-CE (NT), and thereafter decide the matter afresh keeping in view the observations above.

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


M/s Theon Pharmaceuticals Ltd.,
Village Saini Majru, Nalagarh,
Distt. Solan, Himachal Pradesh – 174 101.

Order No. 260/21-Cx dated 16-12-2021

Copy to:

1. The Commissioner of CGST, Shimla (Camp at Chandigarh), C.R. Building, Plot No. 19-A, Sector – 17-C, Chandigarh – 160 017.
2. The Commissioner (Appeals), CGST, Chandigarh, CGST Commissionerate, C.R. Building, Plot No. 19, Sector-17-C, Chandigarh – 160 017.
3. Sh. Sunil Arora, Advocate, H. No. 1023, Sector – 16, Panchkula – 134 108.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



अशिश तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi