



F. No. 195/162/SZ/2017-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..17/01/23.

Order No. 29/2023-CX dated 17-01- 2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application, filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. HYD-EXCUS-001-APP-118-16-17 dated 20.01.2017, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Applicant : M/s Mylan Laboratories Ltd., Medak.

Respondent : The Commissioner of CGST & Central Excise, Rangareddy.

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ORDER

A Revision Application No. 195/162/SZ/2017-RA dated 19.04.2017 has been filed by M/s Mylan Laboratories Ltd., Medak (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD-EXCUS-001-APP-118-16-17 dated 20.01.2017, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 187/2015-16-R dated 02.07.2015 (read with the Corrigendum dated 16.10.2015), passed by the Deputy Commissioner of Central Excise, Jinnaram Division, Hyderabad.

2. Briefly stated, the Applicants herein filed a rebate claim for Rs. 9,04,740/-, on 06.04.2015, in respect of central excise duties paid on export of bulk drugs, vide 04 ARE-1s. The original authority, while sanctioning the claim, noted that the goods exported against ARE-1 No. 33 dated 10.05.2014 and ARE-1 No. 35 dated 16.05.2014 were returned back as such and it is as good as no exports took place. Accordingly, the original authority, vide Order-in-Original dated 02.07.2015, restricted the claim and sanctioned rebate of Rs. 3,39,727/- in cash and an amount of Rs. 5,65,013/- was allowed as credit in CENVAT credit account in respect of the goods cleared against above said ARE-1s. However, subsequently, vide Corrigendum dated 16.10.2015, the amount allowed to be credited in the CENVAT credit account was reduced from Rs. 5,65,013/- to Rs. 1,95,329/-. The Applicants herein filed an appeal against the Order-in-Original dated 02.07.2015 read with the Corrigendum dated 16.10.2015, inter-alia, submitting that in terms of Tribunal's Order in the case of Ring Aqua Plus Ltd. (SGD) {2010 (262) ELT 791 (Tri-Mum)}, when export is not completed and the goods are received back, the duty debited in the CENVAT credit account can be taken back suo-motu without having to apply for refund from the department. However, the Commissioner (Appeals) observed that the issue of suo-motu credit is a separate matter which the original authority had no occasion to examine and, accordingly, dismissed the appeal filed by the Applicant herein.

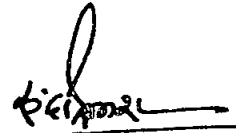
3. The Revision Application has been filed, mainly, on the grounds that the original authority had clearly noted in para-9 of the Order-in-Original that no CENVAT credit had been taken on excise duty paid under the relevant ARE-1 Nos. 33 & 35; that there was no proposal to reject the rebate claim, on any ground, still vide Corrigendum issued on 16.10.2015, rebate of Rs. 3,69,684/- has been denied; that while issuing the Corrigendum the principles of natural justice have been completely ignored as no reasons whatsoever have been stated as to why the rebate allowed under the CENVAT credit account initially has been reduced; that when the export is not completed and the goods are returned they can take back duty debited in their CENVAT credit account suo-motu without having to apply for any refund; and that, therefore, a direction may be given to the original authority to grant the amount of Rs. 3,69,684/- as CENVAT credit.

4. Personal hearing, in virtual mode, was held on 30.12.2022, when Sh. Ravi Kumar Y, Associate Vice President appeared for the Applicant. However, the hearing was adjourned at the request of Sh. Ravi Kumar. In the hearing held on 16.01.2023, Sh. Ravi Kumar Y,

Associate VP reiterated the contents of the RA. No one appeared for the Respondent department on any of the dates of hearing and no request for adjournment has also been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the original authority had initially, vide Order-in-Original dated 02.07.2015, sanctioned rebate of Rs. 3,39,727/- in cash and an amount of Rs. 5,65,013/- was allowed as credit in CENVAT credit account, in respect of the goods cleared under ARE-1 Nos. 33 dated 10.05.2014 and 35 dated 16.05.2014. However, vide Corrigendum dated 16.10.2015, the amount allowed to be credited in the CENVAT credit account has been reduced from Rs. 5,65,013/- to Rs. 1,95,329/-. There is nothing in the Order dated 02.07.2015 of the original authority to indicate that the credit of only Rs. 1,95,329/- was admissible and balance amount was not admissible. In other words, there is nothing indicated in the Order dated 02.07.2015 warranting correction by way of Corrigendum dated 16.10.2015. The Corrigendum itself is also silent about the reasons for issuing the same. Therefore, there is merit in the contention of the Applicants herein that the Corrigendum has been issued in contravention of the principles of natural justice. Accordingly, it would be in the interest of justice to remand the matter to the original authority for de-novo examination, leaving all issues open for consideration afresh. Keeping in view the fact that the exports were made in 2014, i.e., more than 08 years ago, the original authority is also directed to decide the matter afresh, after following the principles of natural justice, within a period of 60 days from the date of receipt of this order.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

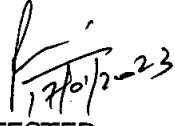
M/s Mylan Laboratories Ltd.,
Unit-I, Survey No. 10,
Gaddapotharam,
Kazipally Industrial Area, Jinnaram Mandal,
Medak District-502325.

M/s Mylan Laboratories Ltd.,
Plot No. 564/A/22,
Road No. 92, Jubilee Hills,
Hyderabad.

G.O.I. Order No. 29 /23-CX dated 17-012023

Copy to:

1. The Commissioner of Central Goods & Service Tax, Rangareddy, Posnett Bhawan, Tilak Road, Ramkote, Hyderabad-500001.
2. The Commissioner of Customs & Central Excise (Appeals), 7th Floor, Kendriya Shulk Bhavan, L.B. Stadium, Basheerbagh, Hyderabad-500004.
3. The Deputy Commissioner of Central Goods & Service Tax, Jinnaram Division, 8th Floor, Posnett Bhavan, Tilak Road, Ramkote, Hyderabad-500001.
4. PA to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice Board.


ATTESTED
प्रवीण नेगी / Praveen Negi
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066