SPEED POST

F. No.195/521/2016-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 21/9/22

Order No. 42/2022-CX dated 21-09-2022 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/CEX/001/APP/061/16-17-CE, dated 29.07.2016, passed by the Commissioner of Custom & Central Excise (Appeals), Hyderabad.
Applicant	:	M/s. Aurobindo Pharma Ltd., Medak.
Respondent	:	The Commissioner of CGST & Central Excise, Hyderabad.

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ORDER

Revision Application No. 195/521/2016-R.A. dated 15.11.2016 has been filed by M/s Aurobindo Pharma Ltd., Medak (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD/CEX/001/APP/061/16-17-CE, dated 29.07.2016, passed by the Commissioner (Appeals), Customs & Central Excise, Hyderabad. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 154/2015-16 R dated 21.05.2015, passed by the Deputy Commissioner of Central Excise, Hyderabad B-Division, Hyderabad.

2. Briefly stated, the Applicant herein filed a rebate claim, under Rule 18 of the Central Excise Rules, 2002, for a total amount of Rs. 74,56,827/,- on 26.02.2015, in respect of Central Excise duty paid on the raw materials, intermediate and input materials used in manufacture of exported goods, namely, 'Zidovudine'. The rebate claim was filed in terms of Notification No. 21/2004-CE(NT) dated 06.09.2004, based on relevant ARE-2s and Shipping Bills. The amount of rebate claim was, subsequently, revised to Rs. 74,17,811/-. On verification, it was found that the goods were exported in discharge of export obligation under Advance Licenses and, therefore, rebate of Central Excise duty paid on inputs used in the manufacture of export goods was not admissible in terms of Notification No. 96/2009-Cus dated 11.09.2009. It was further pointed out that the input-output ratio was not verified by the Assistant Commissioner/ Deputy Commissioner of Central Excise, as required in terms of Conditions (1) & (2) of the Notification No. 21/2004-CE (NT). The rebate claim was, accordingly, rejected by the original authority, vide the aforesaid Order-in-Original dated 21.05.2015. The appeal filed by the Applicant herein before the Commissioner (Appeals) has been rejected, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the requirements of Notification No. 21/2004-CE(NT) have been complied with; that the condition (2) of the said notification is applicable to the Assistant Commissioner/ Deputy Commissioner and not to the manufacturer; that the conditions of Notification No. 96/2009-Cus relate to duty free import of goods under the Advance Licenses and cannot be used to deny rebate claim under Rule 18; that there is no double benefit if the rebate claim is in respect of goods procured indigenously in lieu of imports; and accordingly, the impugned Order-in-Appeal may be set aside.

4. Personal hearing, in virtual mode, was held on 19.09.2022. Sh. N. Ram Reddy, Advocate appeared for the Applicant and reiterated the submissions made in the RA as well as the Written Submissions dated 27.06.2022. At his request, Sh. Reddy was granted time upto the end of the day to file additional Written Submissions. No one appeared for the respondent department nor any request for adjournment has been received. It is, therefore, presumed that the department has nothing to add into the matter. The

additional Written Submissions have been filed by the Applicant on 19.09.2022, after the hearing.

5. The Government has carefully examined the matter. The rebate claim has been rejected for the following reasons:

(i) The Applicant did not follow/ fulfil the conditions (1) and (2) of the Notification No. 21/2004-CE(NT) dated 06.09.2004.

(ii) In terms of Clause (viii) of the Notification No. 96/2009-Cus, the rebate cannot be claimed in respect of inputs used in the manufacture of export goods.

6. The conditions (1) & (2) of the Notification No. 21/2004-CE(NT) are reproduced as under:

*"(1) **Filing of declaration** - The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/ processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

*(2) **Verification of Input-output ratio** - The Assistant Commissioner of Central Excise or the Deputy Commissioner of the Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture processing and export goods."*

It is observed from the orders of the authorities below that, in the present case, the Applicant had sought permission for export of about 20,000/- kgs. of the final product and the permission in terms of condition (2) was granted by the Assistant Commissioner, accordingly, vide letter dated 06.08.2012. Hence, the lower authority has taken a view that the permission granted was not a general permission but was limited to a specific quantity. The Applicants have not specifically controverted this position with any

documents rather their contention is that condition (2) applies to the Assistant Commissioner/Deputy Commissioner of Central Excise and not to the manufacturer exporter. However, the Government finds that this contention of the Applicant is disingenuous and misconceived in as much as condition (2) does not merely require verification of the input-output ratio by the Assistant Commissioner/ Deputy Commissioner but also provides for consequent "permission" to the Applicant for manufacture, processing and export of financial goods. It is, thus, evident that without such permission, the Applicant could not have exported the goods. In this light, the Government finds that the allegations of contravention of conditions (1) and (2) of the Notification No. 21/2004-CE (NT) are established. It is also to be observed that the notification no. 21/2004-CE (NT) specifies the conditions and procedure for claim of rebate thereunder. The procedure for export and presentation of claim of rebate is specified in clause (5) & (6) of the notification and clause (1) & (2) are in the nature of conditions. Therefore, the contravention of the clauses (1) & (2) is not merely a procedural infraction.

7. Another ground for rejection of rebate claim is non-compliance with clause (viii) of Notification No. 96/2009-Cus dated 11.09.2009. The said clause reads as under:

> *"(viii) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:"*

Thus, in terms of the aforesaid Customs notification dated 11.09.2009, rebate under Rule 18 of the Central Excise Rules, 2002 cannot be claimed in respect of materials used in manufacture of resultant product. The Applicant has stated that the Notification No. 21/2004CE (NT) is a self contained notification and the provisions of Notification No. 96/2009-Cus are relevant only for the purposes of assessment of duty under the Customs Act. However, the Government finds that the Hon'ble Delhi High Court, in case of International Tractors Ltd. vs. Commissioner of Central Excise & Service Tax {2017 (354) E.L.T. 311 (Del.)}, has considered the identical issue and held as under:

> *"16. In the present case, there is a categorical reference to Rule 18 in Notification No. 93. It is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption.*

17. The reference to Rules 18 and 19(2) in Notification reveals that non-payment/rebate of either excise duty or customs duty is being granted to encourage exports. Once an export transaction has been used for seeking rebate of duty under CER, as the rebate, in this case, is subject to the conditions and limitations, as specified in Notification No. 93, which clearly requires that 'the facility under Rule 18 or sub-rule (2) of 19 of CER, 2002' ought not to have been availed. The petitioner's right to seek rebate is clearly limited by this condition and hence it is not entitled to rebate under Rule 18 CER."

Thus, the subject issue is squarely covered, against the Applicant herein, by the aforesaid judgment of Hon'ble Delhi High Court, which has also been affirmed by the Apex Court {2019 (368) ELT A 292 (SC)}.

8. The case laws relied upon by the Applicant in support of various contentions are not relevant/applicable, in view of the discussion above.

9. In view of the above, the Government does not find any merit in the subject revision application, and the same is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Aurobindo Pharma Ltd. Unit-III,
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G.O.I. Order No. 942/22-CX dated 21-9-2022

Copy to: -

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2. The Commissioner Customs & Central Excise (Appeals), 7th Floor, Kendriya Shulk Bhavan, Opp. L.B. Stadium, Basheerbagh, Hyderabad-500004.
3. Sh. N. Ram Reddy, Advocate, M/s Quest Com Consultancy Service LLP. H. No. 8-2-598/A/7, 1st Floor, Road No. 10, Banjara Hills, Hyderabad – 500004.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy

ATTESTED

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