

SPEED POST



F.No. 195/537/16-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.....13/10/22.....

Order No. 57/2022-CX dated 13-10-2022 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. 88/2016/LTU dated 19.09.2016, passed by the Commissioner (Appeals), LTU, Bengaluru.

Applicant : M/s Biocon Limited, Bengaluru.

Respondent : The Commissioner of CGST & Central Excise, Bengaluru South.

ORDER

A Revision Application No.195/537/16-RA dated 06.12.2016 has been filed by M/s Biocon Limited, Bengaluru, against the Order-in-Appeal No. 88/2016/LTU dated 19.09.2016, passed by the Commissioner of Central Excise and Service Tax (Appeals), LTU, Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 81/R/2014/LTU 26.05.2014 passed by the Deputy Commissioner, GLT -1, Bengaluru.

2. Brief facts of the case are that the Applicant herein had filed a rebate claim, on 18.02.2014, for Rs. 6,63,115/- being the duty paid on goods exported, which were originally procured from M/s Bayir Chemicals. These goods were, subsequently, exported by the Applicant herein under three separate ARE-1s and the rebate was claimed, under Rule 18 of the Central Excise Rules 2002 read with notification no. 19/2004 CE(NT) dated 06.09.2004. It was observed by the Department that in terms of para 3 of the said notification dated 06.09.2004, the facility of self-sealing and self-certification of export consignment is not extended to Merchant Exporters and the Applicant herein being a Merchant Exporter were not eligible for self-sealing/ self-certification of export consignment. Therefore, the original authority held that the goods claimed to have been exported cannot be correlated to the buyer M/s Bayir Chemicals to establish the duty paid nature and, as such, the rebate claim was rejected vide the Order-in-Original dated 26.05.2014. 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 lower authorities have rejected the rebate claim entirely on technical grounds; that they had produced all the necessary and primary documents including ARE-1s, shipping bills, export certificates issued by the Range Superintendent having jurisdiction over the supplier's factory, packing list etc., which clearly demonstrated the duty paid nature and established identity of the goods purchased from M/s Bayir Chemicals and in turn exported by them; that,

therefore, the duty paid nature of the goods is not disputed and the claim has been rejected only on the basis that self-sealing was not permissible, which is only a matter of procedure.

4. Personal hearing in the matter was held, in virtual mode, on 12.10.2022. Sh. Anand Nagraj, Advocate, appeared for the Applicant and reiterated the contents of the RA. He highlighted that the Range Superintendent in-charge of the factory of exporter has endorsed the ARE-1's, as per Board's Circular No. 294/10/94-CX dated 30.01.1997, and, hence, the identity and duty paid nature of the goods is established. Sh. N. Narasimha Prasad, AC supported the orders of the lower authorities. Sh. Nagraj, Advocate emailed a compilation subsequently.

5.1 The Government has carefully examined the matter. It is observed that, in the present case, the Applicant herein had obtained the goods from the manufacturer M/s Bayir Chemicals Ltd. and thereafter proceeded to export the goods by resorting to self-sealing under 3 different ARE-1's. The objection of the Respondent Department is that, in terms of para-3 (a) of the notification dated 06.09.2004, the facility of self-sealing is available only to the manufacture exporters registered under Central Excise Rules, 2002 and merchant exporters who procure and export the goods directly from the factory or warehouse. Since in the present case, the goods were first brought to the premises of the merchant exporter, the facility of self-sealing was not available. In this light, the authorities below have taken a view that since sealing was not done after physical examination by the Central Excise Officer in-charge of the Applicant's premises, the identity of the goods exported as being those which were cleared on payment of duty by M/s Bayir Chemicals cannot be correlated.

5.2 The Government observes that, in terms of Rule 18 *ibid*, the Central Government may, by notification, grant rebate of duty paid on excisable goods subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification. The notification no. 19/2004-CE(NT) dated 06.09.2004, issued under the said Rule 18, specifies the 'conditions and limitations' under para-2 and 'procedure' under para-3.

5.3 The Hon'ble Bombay High Court has, in the case of UM Cables Ltd. Vs. Union of India {2013 (293) ELT 641 (Bom)}, held that the 'conditions and limitations' for the grant of rebate are mandatory whereas matters of 'procedure' are directory. Similar view has been taken by other Hon'ble High Courts as well. Ref. Jubilant Life Sciences Ltd. {2016 (341) ELT 44 (Allahabad)}, Raj Petro Specialities {2017 (345) ELT 496 (Gujarat)}, Triputi Steel Traders {2019 (365) ELT 497 (Chattisgarh)}, Haldia Petrochemicals Ltd. {2019 (368) ELT 502 (Calcutta)}. The Hon'ble Bombay High Court has, in the case of Zandu Chemicals Limited Vs. Union of India {2015(315) ELT 520 (Bom)}, followed the judgment in UM Cables (Supra) and held that the procedural requirements are capable of substantial compliance. Since, in the present case, the Department's case is limited to the Applicants herein not following the procedure prescribed under para 3 (a) of the notification dated 06.09.2004, it is open to the Applicants to show and establish substantial compliance.

5.4 The Applicants have produced several documents including Shipping Bills, Central Excise invoices of the manufacturer, bills of lading, packing list etc. and have with the help of these documents as well as Batch No. of the goods attempted to correlate the entire chain from supply of goods by the manufacturer till export. The Applicants have also placed on record copies of letters OC no. 880/2013 dated 12.09.2013 & OC No. 1049/2013 dated 20.11.2013 issued by the Superintendent, Peenya VI Range, Bengaluru, endorsing the triplicate copies of the ARE-1's. Therefore, it would, prima facie, appear to the Government that the Applicant herein have made a case that they can establish the identity of the goods and their duty paid nature with reference to documents on record. At the same time, it is also observed that while, as per ARE-1 No. TR13000003 dated 05.09.2013, goods with Batch no. PG/GSS/GLS/213055 & PG/GSS/GLS/213056 are stated to have been exported under Shipping Bill No. 7419006 dated 11.09.2013, on the said Shipping Bill itself only the Batch No. PG/GSS/GLS/213055 is endorsed twice. Thus, it would appear that the documents produced by the Applicant require detailed verification before a final view can be taken.

5.5 In this light, the Government finds that it will be in the interest of justice that the matter is remanded to the original authority for de-novo examination

with a view to establish substantial compliance vis-à-vis the procedural infractions. While doing so the original authority shall accord sufficient opportunities to the Applicants herein to produce the relevant documents, make written and oral submissions and only thereafter decide the case.

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 Biocon Limited,
Konnar Industries, No. 29, 1st Floor,
Veerasandra Industrial Area,
Electronics City Post,
Bengaluru – 560 100.

G.O.I. Order No. 57/22-CX dated 13-10-2022

Copy to: -

1. Commissioner of CGST & Central Excise, Bengaluru South, CR Building, Queen's Road, Bengaluru-560 001.
2. Commissioner of CGST (Appeals), Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Domluru, Bengaluru – 560071.
3. Mr. K.S. Ravi Shankar, (Advocate), No. 152, Race Course Road, Bengaluru– 560 001.
4. PS to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



13.10.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
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