

F.No. 195/48/SZ/2018-RA  
F.No. 195/49/SZ/2018-RA  
F.No. 195/50/SZ/2018-RA  
F.No. 195/79/SZ/2018-RA

**SPEED POST**



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F.No. 195/79/SZ/2018-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... 03/4/23

Order No. 7174/2023-CX dated 03-04-2023 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 Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal Nos. as mentioned in **Column 'F' of Table-I below**, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicants : M/s Himalaya Drugs Company, Bengaluru.

Respondent : Commissioner of CGST, Bengaluru North-West, Bengaluru.

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**Table-I**

S.No.	RA No & date	OIO No. & date	Rebate Amt. sanctioned in OIO (in Rs.)	Rebate Amt. rejected in OIO (in Rs.)	OIA No & date	Additional Rebate Amt. sanctioned in OIA (in Rs.)	Rebate Amt. rejected in OIA (in Rs.)	Rebate Amt. in dispute (in Rs.)
A	B	C	D	E	F	G	H	I
1.	195/48/SZ/2018-RA Dt. 18.05.2018	84(R)/2016 DSP Dt. 07.12.2016	50,09,046/-	1,06,61,335/-	127/2018 CT Dt. 12.02.2018	1,00,07,640/-	6,53,695/-	6,53,695/-
2.	195/49/SZ/2018-RA Dt. 18.05.2018	12 Reb/2016 DSP Dt. 20.02.2017	40,08,399/-	29,91,870/-	142/2018 CT Dt. 16.02.2018	25,84,124/-	4,07,746/-	4,07,746/-
3.	195/50/SZ/2018-RA Dt. 09.05.2018	87 R /2016 Reb DSP Dt. 28.12.2016	7,43,838/-	25,72,142/-	113/2018 CT Dt. 06.02.2018	17,00,488/-	8,11,434/-	8,11,434/-
4.	195/79/SZ/2018-RA Dt. 01.06.2018	04-Reb/2017 DSP Dt.2701.2017 read with Corrigendum dated 01.02.2017	68,36,960/-	18,00,928/-	161/2018 CT Dt. 27.02.2018	6,67,486/-	11,33,442/-	11,33,442/-

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**ORDER**

Four Revision Applications, as detailed in Col. B of the Table above, have been filed against the Orders-in-Appeal, mentioned in Col. F of the Table, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru by M/s Himalaya Drugs Company, Bengaluru (hereinafter referred to as the Applicant).

2. Briefly stated, the Applicants had exported Ayurvedic Medicaments and Preparations on payment of Central Excise duty and claimed rebate of duty paid, under Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate claims were examined by the original authority, i.e., the Assistant Commissioner of Central Excise, Dasanapura Division, but only partly sanctioned. Balance amount was rejected on the grounds that evidence of realisation of export proceeds was not submitted or there was a short realisation as per evidence produced. In the appeals filed by the Applicants herein, the Commissioner (Appeals), upon verification of evidence produced, sanctioned further amounts, out of the amounts rejected by the original authority, and upheld rejection of the balance amounts.

3. The Revision Applications have been filed by the Applicants, mainly, on the grounds that they had submitted details of realisation with regard to alleged short receipt/non submission of BRCs, but the Commissioner (Appeals) had not considered the same while computing the alleged short/non-receipts; that there is no dispute regarding factum of export and payment of duty on goods exported; that there is no requirement of submission of BRCs either in Rule 18 or the Notification No. 19/2004-CE NT, which position has also been accepted by the Commissioner (Appeals); that once the transaction value as per Section 4 of the Central Excise Act 1944 is not disputed, there is no question of re-quantifying the amount of rebate; and that once value is determined and duty is paid, rebate is to be allowed equivalent to the duty paid.

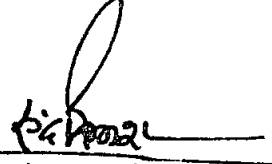
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4. Personal hearing, in virtual mode, was held on 29.03.2023. Shri Vinayak Hegde, Consultant appeared for the Applicant and requested that the synopsis filed by email on 29.03.2023 may be taken on record. He submitted that in all the cases, the export proceeds have been realised in full but the lower authorities have, without due verification, held otherwise and denied part of the rebate claim. Therefore, notwithstanding their contention that realisation of export proceeds is not a pre-requisite for sanction of rebate, the matter may be remanded to the original authority for de-novo examination after due verification. Shri Jayakumar Reddy, AC, who appeared for the department, had no objection.

5 The Government has carefully examined the matter. The orders of Commissioner (Appeals) have been challenged by the Applicants herein both on the grounds that the allegations of short realisation/non-realisation of export proceeds are incorrect as well as on the basis of legal submission that there is no requirement of submission of proof of realisation of export proceeds for grant of rebate in terms of Rule 18 ibid, read with Notification dated 06.09.2004. During the personal hearing, the Applicants have submitted that in all the cases, the export proceeds have been realised in full, but the lower authorities, without due verification, have held otherwise. In this light, notwithstanding their contention that realisation of export proceeds is not a pre-requisite for sanction of rebate, the Applicants have requested for remand to the original authority for de-novo examination, after due verification. Several documents and compilations, including copies of BRCs, have been placed on record, claiming to substantiate that export proceeds have been realised in full. Keeping in view the facts and circumstances of the case and the documents placed on record, the Government finds that the request of the Applicants for remanding the cases to the original authority for de-novo examination and decision afresh, after due verification, is just and fair. Accordingly, the matter is remanded to the original authority to examine the claims afresh after due verification of the evidence produced by the Applicants regarding the realisation of export proceeds and other submissions made by them in this regard. Needless to add, sufficient opportunities for making

written as well as oral submissions shall be accorded to the Applicants during de-novo adjudication.

6 The revision applications are, accordingly, allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

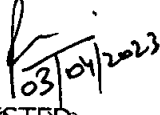
Additional Secretary to the Government of India

M/s Himalaya Drugs Company,  
Makali,  
Bengaluru- 562162.

G.O.I. Order No. 71-74/23-CX dated 03-04-2023

Copy to: -

1. The Commissioner of CGST, Bengaluru North-West, 2<sup>nd</sup> Floor, BMTc Bus Stand Complex, Shivaji Nagar, Bengaluru.
2. The Commissioner of Central Tax (Appeals-II), Traffic Transit Management Centra, BMTc Building, Above BMTc Bus Stand, 4<sup>th</sup> Floor, Domlur, Old Airport Road, Bengaluru – 560 071.
3. Shri Vishnu Daya & Co., Chartered Accountants, 3<sup>rd</sup> Floor, Karuna Complex, Sampige Raod, Malleshwaram, Bengaluru – 560 003.
4. PPS to AS (RA)
5. Guard File.
6. ~~Spare Copy~~
7. Notice Board

  
ATTESTED / Praveen Negi  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
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