



REGISTERED/ SPEED POST

F.No. 195/12/16-RA (CX)
F.No. 195/13/16-RA (CX)
F.No. 195/14/16-RA (CX)
F.No. 195/15/16-RA (CX)
F.No. 195/16/16-RA (CX)
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... 8/8/18

ORDER NO. 512-516/18-CX dated 6-8-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

SUBJECT : Revision Applications filed under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal Nos.
1. HPU/ EXCUS/000/APPEALS-I/ 303/ 2015-16 dated
23.10.2015, 2. HPU/ EXCUS/000/APPEALS-I/304/2015-
16 dated 23.10.2015, 3. HPU/ EXCUS/000/APPEALS-
I/430/2015-16 dated 08.01.2016, 4. HPU/
EXCUS/000/APPEALS-I/431/2015-16 dated 11.01.2016
and 5. HPU/ EXCUS/000/APPEALS-I/432/2015-16 dated
11.01.2016, passed by the Commissioner of Central Excise
(Appeals-I), Meerut.

APPLICANT : M/s Bal Pharma Limited, Plot No.1,2,3 & 69, Sector-
4, IIE, Pant Nagar, Udham Singh Nagar,
Uttarakhand- 263145.

RESPONDENT : The Commissioner of Central Goods & Services Tax,
Dehradun, "E" Block, Nehru Colony, Haridwar Road,
Dehradun-248001.

ORDER

Five Revision Applications F.No. 195/12/16-RA (CX), F.No. 195/13/16-RA (CX), F.No. 195/14/16-RA (CX), F.No. 195/15/16-RA (CX) and F.No. 195/16/16-RA (CX) are filed by M/s Bal Pharma Limited, Plot No.1,2,3 & 69, Sector-4, IIE, Pant Nagar, Udham Singh Nagar, Uttarakhand-263145, (herein after referred to as the applicant) against Orders-in-Appeal Nos. HPU/ EXCUS/000/APPEALS-I/ 303/ 2015-16 dated 23.10.2015, HPU/ EXCUS/000/APPEALS-I/304/2015-16 dated 23.10.2015, HPU/ EXCUS/000/APPEALS-I/430/2015-16 dated 08.01.2016, HPU/ EXCUS/000/APPEALS-I/431/2015-16 dated 11.01.2016 and HPU/ EXCUS/000/APPEALS-I/432/2015-16 dated 11.01.2016, passed by the Commissioner of Central Excise (Appeals-I), Meerut, in respect of the applicant's appeals filed against Orders-in Original Nos. 36/ Rebate/ Bal Pharma/ 2015-16 dated 16.04.2015, 35/ Rebate/ Bal Pharma/ 2015-16 dated 16.04.2015, 184/CE/ Rebate/ Bal Pharma/ RDR/2015-16 dated 07.09.2015, 185/CE/ Rebate/ Bal Pharma/ RDR/2015-16 dated 07.09.2015 and 186/CE/ Rebate/ Bal Pharma/ RDR/2015-16 dated 07.09.2015 of the Assistant Commissioner, Central Excise Division, Rudrapur.

2. The Brief facts leading to the filing of the Revision Applications are that the applicant had claimed rebate of duty of Rs 13,14,845/-, Rs.1,80,920/-, Rs.5,74,109/-, Rs.5,44,536/- and Rs.8,01,215/- against clearance of goods for export under claim for rebate of duty paid on inputs in the manufacture of export goods under Rule 18 of Central Excise Rules, 2002 and Notification No. 21/ 2004- CE (NT) dated 06.09.2004. However, the adjudicating authority rejected their claims mainly on the grounds that the goods were not exported on ARE-2s, as per the shipping bills the goods were exported by M/s Bal Pharma Limited, Bangalore and not by the applicant unit at Pant Nagar, input-output ratio in respect of the exported goods was not furnished to the jurisdictional Assistant Commissioner for its verification and the applicant did not file even declarations regarding the manufacturing of goods meant for exports. The applicant's appeals filed before the Commissioner of Central Excise (Appeals) were also rejected under abovementioned O-I-As.

3. The above Revision Applications have been filed mainly on the grounds that they have exported the goods under AREs-1 by mistake which is only procedural lapse and that they had filed declarations of input-output ratio initially on 30.05.2011 and subsequently on 22.12.2014 which were approved by the Assistant Commissioner on 05.02.2015 and the fact of duty paid nature of inputs used in the manufacturing of exempted goods is not disputed even by the lower authorities.

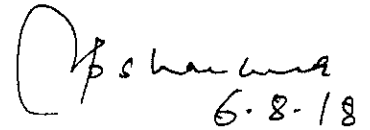
4. Personal Hearing in this case was held on 21.05.2018 and it was availed by Sh. D. K. Singh, Advocate, for the applicant who reiterated the above-mentioned grounds of revision pleaded in their application. However, no one appeared for the respondent and no request for any other date for hearing was also received from which it is implicit that the respondent is not interested in availing the personal hearing.

5. The Government has examined the matter and it is observed that under notification no. 21/ 2004/ CE dated 06.09.2004 rebate of duty on inputs is payable subject to following of conditions and procedures specified therein such as filing of declaration with the jurisdictional Assistant/ Deputy Commissioner regarding

manufacturing of goods for export, input-output ratio, the rate of duty on inputs, the manufacturing formula, the approval of the said declarations and the clearance of goods under Form ARE-2 etc. The objective of these conditions is clearly to enable the jurisdictional authorities to verify the correctness of the use of inputs in the manufactured goods and the rebate of duty claimed by the exporter. Therefore, these conditions were very important for the applicant. However, these conditions were not followed by the applicant before exporting the goods covered in the above referred revision applications. It is claimed that they had submitted the input-output ratio to the jurisdictional Assistant Commissioner on 22.12.2014 subsequent to the export of goods and it was approved vide letter dated 05.02.2015. Its copies are also found enclosed with the Revision Application. But the said approval was issued by the jurisdictional Assistant Commissioner much after the exports of goods covered in the five revision applications and above all the input-output ratio was approved subject to following of three conditions specified therein. One of these conditions was that the goods shall be exported in Form ARE-2 in accordance with the procedure specified in notification no. 21/ 2014, which is an essential condition in notification no. 21/ 2014 also. Thus, the export of goods under ARE-1 was never approved or condoned by the Assistant Commissioner even under the above stated letter dated 05.02.2015. Since the applicant neither informed the jurisdictional authorities regarding claim of rebate of duty under notification no. 21/ 2004 prior to export of goods nor the goods were exported under ARE-2, the departmental authorities were not in a position to verify the input-output ratio with regard to exported goods and the correctness of the rebate claims. The issue regarding impact of non-export of goods under ARE-2 on rebate of duty is already considered by the M.P. High Court vide its order dated 17.12.2013 in W.P.No.8199/ 2011 in the case of CIL Textile Private Limited Vs UOI [<https://mphc.gov.in/judgement-orders>], relied upon by the Commissioner (Appeals) in her orders, wherein it is held by the Division Bench that failure to file ARE-2 would deprive the appellant to get rebate claims in such situation as the clearance of goods under ARE-2 is a statutory condition. The applicant has placed reliance on Bombay High Court's decision 24.04.2013 in W.P. Nos. 3102-3103 of 2013 in the case of U. M. Cables Ltd. Vs. Union of India and others [http://www.bombayhighcourt.nic.in/case_query.php/ 2013 (293) E.L.T. 641 (Bom.)] to assert that ARE-2 is not a mandatory condition. However, this decision is not found relevant for the present case because non-export of goods under ARE-2 was not an issue at all in the said case and the issue was actually regarding admissibility of rebate of duty under notification no. 19/ 2004- CE (NT) in absence production of original/ duplicate copies of ARE-1. Moreover, this decision was considered by the Hon'ble M.P. High Court in the above case of CIL Textile Private Limited Vs UOI but it was not followed. Above all, the appeal of CIL Textile Private Limited against the High Court's order was rejected by the Supreme Court also vide its order dated 18.07.2014 and thus the M.P. High Court's decision has been affirmed by the Apex Court also. Consequently, it is binding on a quasi-judicial and judicial authorities. Apart from non-observance of above mentioned mandatory conditions by the applicant, it is further observed that the very basis of claimed rebate of duty on inputs by the applicant at Pant Nagar is not found fulfilled in this case in as much as the goods have been exported by M/s Bal Pharma Limited factory at 21 & 22, Bommasandra Industrial Area, Bangalore as per Shipping

Bills and not by the applicant. The applicant has claimed that the Bangalore based M/s BAL Pharma Limited and M/s BAL Pharma Limited, Pant Nagar are one and the same and the Shipping Bills in the name of M/s BAL Pharma Limited, Bangalore, were made because their headquarters is in Bangalore. However, the Government does not find this reason convincing because M/s BAL Pharma Limited at Bangalore is a manufacturing unit and it is entirely different from the applicant unit at Pant Nagar as both were having different Central Excise Registrations. Thus, the Shipping Bills are not in the name of the headquarters of the applicant and instead these are in the name of another unit of M/s BAL Pharma Limited in Bangalore. Moreover, the applicant has not provided any copy of ARES-1 also to establish that the goods were cleared from the applicant unit at Pant Nagar at all. Accordingly, it is not established that the goods were exported by the applicant unit at Pant Nagar. Considering all these facts, various decisions of Government of India relied upon by the applicant are not found applicable in the present proceedings as these decisions involved entirely different facts and issues.

6. In view of the above discussions, the Government does not find any infirmity in impugned Orders-in-Appeal and the revision applications are rejected.


6.8.18

(RAJPAL SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA


M/s Bal Pharma Limited,
Plot No.1,2,3 & 69, Sector-4,
IIE, Pant Nagar, Udham Singh Nagar,
Uttarakhand-263145

G.O. No-512-5/6/18-Cx. dt-6-8-18

Copy to: -

1. The Commissioner of Central Goods & Services Tax, Dehradun, "E" Block, Nehru Colony, Haridwar Road, Dehradun-248001
2. The Commissioner of Central Excise (Appeals-I), Opp. C.C.S. University, Mangal Pandey Nagar, Meerut.
3. The Deputy/ Assistant Commissioner of Central Tax Division, Rudrapur
4. PS to AS(RA)
5. Guard File.

ATTESTED


(Ravi Prakash)
OSD (RA)