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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/23/WZ/2022-RA | 998
F.No.195/24/WZ/2022-RA

Date of Issue: 19-02-2024

ORDER NO. 07-08 /2024-CX (WZ)/ASRA/MUMBAI DATED 07-02-2024
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : 1. M/s Ampoules and Vials Manufacturing Co. Ltd
2. Shri Niraj Kejriwal, Business Executive & Director

Respondents: Commissioner of CGST & Central Excise, Palghar

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
Nos. DL/CGST/A-III/MUM/19-20/2022-23 dated 11-05-
2022 passed by the Commissioner (Appeals-III), CGST &
CX, Mumbai

ORDER

This two Revision Applications have been filed by M/s Ampoules and Vials Manufacturing Co. Ltd. and Shri Niraj Kejriwal, Business Executive and Director (hereinafter referred to as "Applicant 1 & Applicant 2 or the Applicants") against the Orders-in-Appeal Nos. DL/CGST/A-III/MUM/19-20/2022-23 dated 11-05-2022 passed by the Commissioner (Appeals-III), CGST & CX, Mumbai.

2 *Brief facts of the case are that Applicant 1 are the manufacturers of Stainless Steel utensils falling under Chapter sub-heading No. 7323.90 and Stainless Steel Cutlery falling under Chapter sub heading No. 8215.00 of the Central Excise Tariff Act, 1985. On the basis of intelligence gathered claimed that the Applicants were availing irregular and in-admissible Cenvat credit on the basis of C. Ex invoices pertaining to the goods which were neither received at the factory premises nor used in the manufacture of excisable goods to have been exported, investigation was initiated against them. After the completion of the investigation two SCNs dated 10-05-2007 and 8-06-2007 was issued to the applicant i) proposing for denial of cenvat credit availed and utilized by them and imposition of penalty on Shri Niraj Kejriwal under Rule 26 of Central Excise Rules, 2002 and ii) proposing the denial of rebate of Rs.35,06,233/- and imposition of penalty on Shri Niraj Kejriwal under Rule 26 of Central Excise Rules, 2002. The Show Cause Notices was adjudicated by the Additional Commissioner, Central Excise, Thane-II vide OIO No. 04/SKS/TH II/2008 dated 14-03-2008 and 07/SKS/TH II/2008 dated 02-06-2008 respectively confirming the demands as proposed in the aforesaid SCNs.*

3. Aggrieved by the aforesaid Orders, the Applicants then filed appeal before Commissioner (Appeal), Central Excise, Mumbai Zone-I. The Commissioner (Appeals) vide Orders-in-Appeal Nos. SB/132 to 135/Th-II/2010 dated 09.06.2010 upheld the Orders-in-Original dated 12.03 2008 and 02.06.2008 and rejected the appeals filed by the Applicants

4. Aggrieved by the aforesaid Commissioner (Appeals) Order, the Applicants preferred two separate appeals before the before CESTAT against denial of cenvat credit and denial of rebate of duty. CESTAT vide Order No. A/90787-90788/2017 dated 17-11-2017 in the issue of denial of Cenvat credit remanded the matter back to the original adjudicating authority with the direction to consider the octroi receipts submitted by the Applicant after verification from the concerned authority. However CESTAT vide Order No. A/22-23/12/EB/C-II dated 28.11.2011, dismissed the appeal pertaining to the recovery of Rebate, as non-maintainable in view of the Section 35 B of the Central Excise Act, with the observations that the Applicant were at liberty to approach the appropriate forum.

5. The Applicants then filed the Revision Applications against the Commissioner Appeal's Order dated 09-06-2010 denying the rebate. The Revisionary Authority vide Order No. 454-461/2020-CX(WZ)/ASRA/Mumbai dated 19-03-2020 observed that since the matter in both the SCNs dated 10-05-2007 and 08-06-2007 were same and since CETAT has remanded back the matter in SCN dated 10-05-2007 to the original adjudicating authority, the matter in SCN dated 08-06-2007 was also remanded back to the adjudicating authority.

6. Accordingly the matter was re-adjudicated and the Adjudicating Authority vide the OIO No.PLG-CGST-JC-10/2020-21 dated 31-03-2021, again confirmed the denial of Cenvat credit and vide OIO No. PLG-GST-ADC-VDJ-03-2021-22 DATED 31-01-2022 confirmed the denial of rebate and ordered recovery of the sanctioned rebate amount.

7. Aggrieved by the aforesaid Orders the applicant filed separate appeals with the Commissioner (Appeals-III), CGST & CX, Mumbai. Commissioner Appeal vide OIA No. DL/GST/A-III/MUM/180-181/2021-22 dated 23-03-2022, pertaining to the issue of denial of Cenvat credit in respect of OIO dated 31-03-2021, rejected the appeal as non-maintainable, since the Applicants had not paid the amount of mandatory pre-deposit as stipulated under Section 35F of the Central Excise Act, 1944. In respect of the appeal

against the denial of rebate claim, Commissioner Appeal vide OIA No. DL/GST/A-III/MUM/19-20/2022-23 dated 11-05-2022 upheld the OIO No PLG-GST-ADC-VDJ-03-2021-22 dated 31-01-2022 wherein the rebate claim was denied. The rebate claim was rejected on the grounds that Cenvat credit used for discharging excise duty on the exported goods was denied to the applicant vide OIA No. DL/GST/A-III/MUM/180-181/2021-22 dated 23-03-2022.

8 Aggrieved by the aforesaid Commissioner Appeal's Order dated 11-05-2022, the applicant filed Revision Application to set aside the impugned OIA

9 1 A personal hearing in the case was fixed on 26-07-2023. Ms Payal Nahar, Advocate appeared online for the hearing. She informed that issue of Cenvat credit is before CESTAT and the same is likely to be heard the next month. She requested for adjournment of three months.

9 2 Subsequently the applicant vide their letter dated 05-09-2023, submitted that they had filed an appeal against the OIA dated 23-03-2022 in CESTAT and CESTAT vide Final Order dated A/86188-86189/2023 set aside the OIA dated 23-03-2022 and remanded the matter to decide the issue on merits. The applicant also requested for personal hearing

9 3 Personal hearing was granted on 06-11-2023. Ms Payal Nahar, Advocate appeared online for the hearing and reiterated earlier submissions. She submitted that denial of rebate is on the ground that Cenvat was not admissible to the applicant. She further submitted that since issue of admissibility of Cenvat credit has been remanded back by CESTAT to Commissioner (A), it would be in the interest of justice to remand the instant matter as well


10. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original, Orders-in-Appeal and CESTAT Orders

11. Government observes that the CESTAT has remanded the Cenvat issue decided by Commissioner Appeal vide DL/GST/A-III/MUM/180-181/2021-

22 dated 23-03-2022 back to them for deciding the case afresh as they had rejected the applicant's appeal as non-maintainable. The Cenvat matter remanded back and the matter in the instant Revision Applications of denial of rebate are inter connected and any decision on Cenvat credit at denovo proceedings will have a bearing on the issue of recovery of rebate. Therefore, the issues raised in the current revision applications are infructuous and wholly dependent on the outcome of denovo proceedings before the Appellate Authority.

12. In view of the above discussions and findings, Government sets aside the Order in Appeal dated 11-05-2022 and remands the matter to the Appellate Authority to decide the impugned case on the basis of the outcome of the decision in respect of the admissibility of Cenvat issue.

13. The two Revision Applications are allowed in above terms.


(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.07-08/2024-CX (WZ)/ASRA/Mumbai DATED 07-02-2024.

To,

1. M/s Ampoules and Vials Manufacturing Co. Ltd Plot No. L-4, MIDC Tarapur, Boisar, Taluka-Palghar, Thane-401 506.
2. Shri Niraj Kejriwal, Business Executive and Director, M/s Ampoules and Vials Manufacturing Co. Ltd., Unit No.19, 3rd Floor, Mahalaxmi Ind. Estate, Gandhi Nagar, Lower Parel, Mumbai-400013.
3. The Commissioner of CGST & EX, Thane Rural, 4th floor, Bandra Kurla Complex, Bandra, Mumbai 400 051.
4. Commissioner (Appeals-III) CGST & Cx, Mumbai, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug Parel, Mumbai-400012

Copy to.

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2. Sr. P.S to AS (RA), Mumbai.
3. File copy
4. Notice Board

