



REGISTERED
SPEED POST

F.No. 195/1111-1119/11-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...23/8/13

ORDER NO. 1087-1095 /13-Cx DATED 22-08-2013 OF THE
GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT 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 orders-in-appeal
No.US/170 to 178/RGD/2011 dated 9.8.2011 passed
by the Commissioner of Central Excise (Appeals),
Mumbai-II

Applicant : M/s Sandoz Pvt. Ltd., Raigad

Respondent : Commissioner of Central Excise, Mumbai-II

ORDER

These revision applications are filed by the M/s Sandoz Pvt. Ltd., Raigad against the orders-in-appeal No.US/170 to 178/RGD/2011 dated 9.8.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai with respect to orders-in-original passed by the Deputy Commissioner of Central Excise Mahad Division.

2. Brief facts of the case are that the applicants cleared their final products for export under various ARE-1 on payment of appropriate central excise thereon and filed rebate claims. The jurisdictional Assistant Commissioner of Central Excise passed impugned Orders-in-original wherein the rebate claims were sanctioned with the reduced amounts than of the claims filed by the applicants on the ground of that duty paid on portion of value which was in excess of value determined under Section 4 of Central Excise Act 1944 cannot be rebated under Rule 18 of Central Excise Rules 2002.. The rebate amount has been restricted to the proportionate duty element payable on FOB value which was considered as assessable value under Section 4 of Central Excise Act 1944.

3. Being aggrieved by the impugned orders-in-original, the applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government mainly on the following grounds:

4.1 It is practice of the applicants to deduct value towards sea or air freight & insurance from load port to destination port. This freight & insurance to be deducted from CIF value used to be informed by the Shipping Agent on approximate basis. These are the probable values that may be required by the applicants at the time of actual clearance from the factory to arrive at FOB value

for the purpose of payment of excise duty. This freight & insurance may change when the goods are shipped from load port, which may be due to difference in date of clearance of goods from factory and date of shipment, change in shipping vessel or due to any other commercial reasons. However, the Shipping Agent has taken into consideration actual freight & insurance charges required to pay by the applicants at the time of shipment of the goods and preparation of the Shipping Bill. Therefore, there may be the small difference between FOB value shown in the ARE-I and FOB value shown on corresponding Shipping Bill. In many cases, the FOB value shown on shipping bill is less than what is shown on the ARE-1, as it is based on estimation.

4.2 The Rule 18 of Central Excise Rules, 2002 provides for grant of rebate of duty of excise paid on excisable goods exported out of India. The rebate is sanctioned on the basis of the ARE-1 accompanying the export consignment. A copy ARE-1 duly assessed is received by the rebate sanctioning authority directly from the Range Superintendent. As per the Circular No.510/06/2000-CX, dated 03.02.2000 issued by the CBEC, the rebate sanctioning authority should examine only the admissibility of rebate of the duty paid on the export of goods covered by a rebate claim and should not examine the correctness of assessment of the goods exported. The Board vide this Circular clarified that once the value, applying market rates, is determined as per the provisions of Section 4 and the duty is paid thereon, which is certified by the jurisdictional Range Superintendent as correct, then the rebate has to be allowed equivalent to the total amount of the duty paid. The rebate sanctioning authority is not to re-quantify the amount of rebate by applying any other amount of freight & insurance prevalent on any other date subsequent to payment of duty.

4.3 The applicant would like to draw attention to the one common order bearing No.1035-1102/11-Cx dated 25.8.2011 vide which 69 revision applications filed in similar cases by the Department were disposed off by remanding the

cases back to original authority to decide them fresh after considering requisite verification.

4.4 The applicants would like to state that the Orders-in-Appeals passed by the Commissioner of Central Excise (Appeals) by upholding the Orders-in-Originals is silent rather has not passed any order in respect of the part of amount withheld and not rebated. The department cannot withheld/appropriate the amount which might be paid wrongly by the assessee. The applicant would like to draw attention to the decision of Hon'ble High Court of Punjab & Haryana in case of M/s Nahar Industrial Enterprises Ltd., Vs UOI (Ref: Order dated 11.09.2008 in CWP No.223S, 3358 of 2007) wherein it has been held that - "Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion; refund by way of credit is appropriate." In the instance case, the action of the department to hold the amount without any order is not legal. The applicants request that the amount of Rs.1,53,451/- so held up illegally may please be ordered to be refunded alongwith an appropriate interest payable thereon.

5. Personal hearing was scheduled in this case on 26.6.2003 & 7.8.2013. Hearing held on 7.8.13 was attended by Shri Sudhir J.Ghatge, GM-Indirect Tax on behalf of the applicant, who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that in this case, the adjudicating authority after examining the record, has accepted the FOB value as an assessable value in terms of Section 4 of Central Excise Act 1944 and allowed the rebate of duty paid on said FOB value. Applicant had paid duty on ARE-1 value which was found to be CIF value of goods. The rebate claim of balance amount was rejected. Commissioner (Appeals) has upheld the impugned orders-in-original. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government notes that applicant has accepted that order of lower authorities determining the FOB value an assessable value of goods in this case in terms of Section 4 of Central Excise Act 1944. However, applicant has argued that the excess paid duty cannot be retained by Government and is required to be refunded as held by Hon'ble High Court of Punjab & Haryana in the case of Nahar Industrial Enterprises Ltd. Vs UOI reported as 2009 (235) ELT 22 (P&H).

9. Govt. however observes that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and it has to be treated as a voluntary deposit with the Government which is required to be returned to the applicants in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

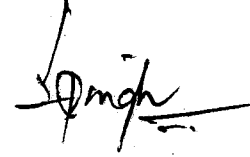
"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash

refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess paid amount/duty is required to be returned to the applicants in the manner in which it was paid by him initially. Applicant has paid duty from cenvat credit account. Government therefore, directs that the excess paid amount may be allowed as recredit in the cenvat credit account from where it was paid. The impugned orders-in-appeal are modified to this extent.

10. Revision applications are disposed off in above terms.

11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./ Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

M/s Sandoz Pvt. Ltd.
L-1, Additional MIDC Industrial Estate
Mahad-402301
Distt. Raigad

Order No. 1087-1095 /2013-Cx dated 22-08-2013

Copy to:

1. Commissioner of Central Excise Central Excise, Mumbai Zone-II.
2. Commissioner of Central Excise (Appeals), Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Deputy Commissioner of Central Excise Mahad Division, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614
4. PA to JS (RA)
5. Guard File
6. Spare copy

ATTESTED



(T.R.Arya)
Superintendent (Revision Application)

