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सत्यमेव जयते
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.195/611/2013-RA /937 Date of Issue: 29.01.2019

ORDER NO. 121 / 2020-CX (WZ)/ASRA/MUMBAI DATED 20.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Glenmark Generics Ltd., Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/33/M-I/2013 dated 25.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

ORDER

This revision application has been filed by the M/s Glenmark Generics Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/33/M-I/2013 dated 25.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The brief facts of the case is that the Maritime Commissioner (Rebate), Central Excise, Mumbai-I (Original authority) rejected rebate claim amounting to Rs.7,80,771/- (Rupees Seven Lakh Eighty Thousand Seven Hundred Seventy One only) filed by the applicant vide Order in Original No. No. K-III/941-R/2012(MTC) dated 22.11.2012 on the grounds that the applicant had submitted theire rebate claim after a period of more than one year from date of exportation of their goods and applicant also failed to submit original statutory documents evidencing export of goods and payment of duty alongwith the rebate claim.

3. Being aggrieved, the applicant filed appeal before Commissioner of Central Excise (Appeals), Mumbai Zone-I against the aforesaid Order in Original on 22.11.2012.

4. The Commissioner of Central Excise (Appeals), Mumbai Zone-I vide impugned Order-in-Appeal No. BR/33/M-I/2013 dated 25.02.2013 upheld the Order in original No. No. K-III/941-R/2012(MTC) dated 22.11.2012 and rejected the appeal filed by the applicant..

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds that:

5.1 Order-in-Appeal is not a "Speaking Order". They had relied on various case laws as decided by High Court and different Benches of Tribunals which were very much applicable in the present case. No case has been distinguished and not even a remote whisper whatsoever was made on the cases cited and relied in the order-in-Original dated 21.11.2012 as well in Order-in-Appeal dated 25.02.2013. The Rulings made by the Courts are binding on the Departmental Officers, which need no further clarification and discussions.

5.2 if the orders of original or Appellate authorities were not based on material on record, the same would suffer from non application of mind and clearly perverse and were liable to be quashed." This was

ruled by Hon'ble Court of Bombay in the case of Pidilite Industries Limited V/s. GOI. as reported at 1983(12) ELT 461.

5.3 order passed in disregard of precedent judgments of Tribunals, High Courts and Supreme Court not sustainable" as was ruled in the case of Kanan Foam Industries V/s. Collector as reported at 1993(68) ELT 368(Tribunal).

5.4 Department as well as appellate authorities must be enjoined to augur fully points raised in submissions made before them. It is only then that their orders can properly considered as speaking order, which is an essential requirement of natural justice. It is only when this is done, that it becomes evident that adjudication order is clear about the issue involved and has examined them fully before coming to a decision. It also affords opportunity to appellate authority the facility of going through the grounds of such a decision. Besides, assessee cannot be afforded the satisfaction of being fully heard until the orders passed deal with all the submissions made by him." This was decided in the case of Kesoram Raga Vs. Collector as reported at 1988(37) ELT 312-Tribunal. They also rely on Icycold Commercial Enterprises Vs. Collector as reported at 1994(69) ELT 337, Collector Vs. Reliance Textiles Ind.[1985 (19) ELT 497.], U01 Vs. Security & Finance —1983(13) ELT 1562-Supreme Court, Rasoi Vanaspati Ind. Vs. Collector-1983 (12) ELT 169-Tribunal, S N Lihala Vs. Collector-1987 (29) ELT 310-Tribunal, K. Balan Vs. GOI 1982(10) 386-Madras High Court. The Commissioner (Appeals) has not distinguished nor analysed the cases cited and relied by them.

5.5 the Commissioner (Appeals) while rejecting the Appeal preferred by them has cited cases held by the Hon'ble Apex Court as well as by ruling made by a Hon'ble Delhi High Court and 5 member Bench of Hon'ble CESTAT, Mumbai. All these cases are applicable if they had not submitted rebate claims within the statutory period of one year from exportation of goods.

5.6 the "relevant date" under Section 11 B of the Central Excise Act, 1944 in the present case is the date on which the first rebate claim was submitted to the Deputy Commissioner as also supported by Hon'ble High Court of Delhi in the case of Arya Exports & Ind. = 2005(192) ELT 89. Therefore, the rebate claim was rightly submitted within the prescribed limit under Section 11 B of the Central Excise Act, 1944.

In view of the above, the applicant requested to set aside the impugned Order and allow rebate of duty.

6. A personal hearing in the case was held on 28.08.2019. Shri Mangesh Chaudhary, Manager Finance, duly authorized by the applicant, appeared for the personal hearing. He reiterated written submission and grounds of appeal. In view

of the submission, it was pleaded that the Order-in-Appeal be set aside and the revision application be allowed.

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

8. On perusal of records, Government observes that the applicant M/s Glenmark Generics Ltd., Mumbai, a Manufacturer Exporter, had filed a rebate claim amounting to Rs.7,80,771/- on 29.08.2008, under Notification No. 19/2004 C.Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11 B of Central Excise Act, 1944, for the goods cleared from their registered factory and subsequently exported through Air Cargo Complex, Sahar, Mumbai. The said rebate claim was returned to the manufacturer exporter along with the original documents, (i.e. original/ duplicate/ triplicate ARE-1s and Excise Invoices) under the cover of deficiency memo dated 23.09.2008, directing them to re-submit the same after compliance of the deficiencies. The applicant, subsequently got themselves registered under Central Excise & Service Tax Large Taxpayer Unit (L.T.U.), Mumbai filed the said rebate claims with the L.T.U. on 28.02.2011 i.e after a gap of more than 2 years. However, Deputy Commissioner, L.T.U. Mumbai returned the said claims to the applicant as the subject claims had earlier been filed with erstwhile jurisdiction. The applicant, then submitted the rebate claim on13.06.2011 to the Maritime Commissioner, Central Excise Mumbai-I, stating that, the original documents were lost in transit and produced the unattested photocopies of ARE-1s, having Customs endorsement in Part-B. The applicant also submitted photo copies of ARE-1s and photocopies of triplicate copies of Central Excise invoices, claiming that the original documents have been lost in transit.

9. The applicant was issued Show cause Notice dated 27.08.2012 by the Original Authority proposing to reject the rebate claim filed by the applicant and after following the due process of law the Original authority vide Order in original No. No. K-III/941-R/2012(MTC) dated 22.11.2012 rejected the rebate claim of Rs.7,80,771/-.

10. Government also observes that Commissioner (Appeals) while upholding the aforesaid Order in Original vide impugned Order observed that

"In the instant case, it is observed that there is no evidence to show that the Xerox copies of shipping bill/ documents were submitted to Customs authorities in time for rectification of the deficiencies as required. under Notification No- 19/2004 (NT) dt 06.09.2004 as amended, issued under Rule 18 of Central Excise Rules. 2002 read with Section 11B of Central Excise Act, 1944. The provisions of limit are mandatory and Central Excise and Customs authorities cannot grant a refund which is filed beyond due date. Honorable Supreme Court in the case of M/s Miles India Ltd-V/s-ACC [1987 (30) ELT 64 I)SC)[has held that statutory, authority cannot traverse beyond the confines of law and cannot grant relief by passing the bar of limitation. The Honorable Delhi High Court in the case of M/s Jumax Foam V/ s UOI [2003(157)ELT 252 (Delhi H.C.)] has held that even if duty was collected by misrepresenting rules, regulations or by erroneous finding of facts. refund claim has to filed within the prescribed time limit only. In CCE -Vs- Kashmir Conductors [1997 (96) ELT 257(CEGAT- 5 Member Bench)Jit ,as held that the time limit of one year have to be strictly applied. Principle of "cause of action" is irrelevant. In light of the above, a conclusion can he drawn that the appellant has submitted the rebate claim after the expiry of the stipulated period".

11. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court, Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11 B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(a) In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944."

(b) Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

"claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962."

(c) In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act.....

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

12. Hon'ble High Court of Delhi in the case of C.C.E. Vs Arya Exports and Industries [2005(192) ELT 89] has also held that date of filing claim is the date on which claim was filed initially in form not prescribed or without documents. This judgment has been relied upon by the applicant in the present case. Government has also referred & relied on this case [2005(192) ELT 89] while deciding following cases involving similar issues.

In Re : Bajaj Electricals Ltd. [2012 (281) E.L.T. 146 (G.O.I.)];
In Re : Famy Care Ltd. [2014 (311) E.L.T. 871 (G.O.I.)].

13. In view of foregoing discussions, Government is of the considered view that the rebate claims filed by the applicant are to be treated as filed within stipulated time limit since they were initially filed within stipulated time limit,

14. As regards non submission of the original statutory documents, as required to be filed alongwith the claim of rebate, as per Notification No. 19/2004-CE(NT) dated 06.09.2004 by the applicant, Government observes that there are various judgments wherein Rebate claims have been allowed in cases where the requisite original documents have been lost, but other collateral evidences that the export has actually taken place have been produced by the claimant. Such judgments to name the few are –

- M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) [2013 (293) E.L.T. 641 (Bom.)], wherein the Petition filed against rejection of rebate claims for non production of the original and the duplicate copy of the ARE-1 form was allowed by Hon'ble Bombay High Court.

- Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] while deciding the identical issue, relying on aforestated order of Hon'ble High Court of Bombay, Hon'ble Gujarat High Court observed that *"it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".*

15. Government finds that aforesaid Hon'ble High Court orders are squarely applicable to such cases where the claimant has failed to submit the original application due to loss or they being misplaced.

16. Government also observes that Hon'ble High Court of Bombay in its judgments in the case of M/s. U.M. Cables v. UOI [(2013 (293) E.L.T. 641 (Bom.)] referred at para 14 above has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, in the light of principle laid down by Hon'ble High Court of Bombay in the said case, is of the view that original authority has to

consider the rebate claims on the basis of collateral evidence if they establish actual export of impugned goods. From the Order in Original dated 22.11.2012 Government has observed that the applicant has also submitted Bond under a Stamp paper dated 18.01.2011.

17. Accordingly, Government sets aside the impugned Order-in-Appeal and remands the case back to original authority to decide the case afresh taking into account the above observations. The applicant is directed to submit all the documents before original authority for verification. A reasonable opportunity of hearing will be afforded to the concerned parties.

18. The revision application is disposed of in the above terms.

19. So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 121/2020-CX (WZ)/ASRA/Mumbai DATED 20.01.2020

To,

M/s Glenmark Generics Ltd.,
Glenmark House, B.D. Sawant Marg, Andheri (East),
Mumbai 400 099.

Copy to:-

1. The Commissioner of GST & CX, Mumbai East Commissionerate. 9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. The Commissioner, Central Excise, (Appeals-II) Mumbai, 3rd Floor, GST Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, Division-III, GST & CX, Mumbai East Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.