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**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. 195/396/13-RA/1648

Date of Issue: 03.03.2021

ORDER NO. 23/2021-CX (WZ) /ASRA/MUMBAI DATED 26.02.2021
OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN
KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF
CENTRAL EXCISE ACT,1944.

Applicant : M/s. Okasa Pharma Pvt. Ltd.
Plot No. L-2, Additional MIDC Area,
Satara - 415 004.

Respondent: Commissioner, Central Excise, Pune

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against the Order-in-Appeal No. P-
II/MMD/278/2012 dated 30.11.2012 passed by the
Commissioner(Appeals), Central Excise, Pune-II.

ORDER

This Revision Application has been filed by M/s. Okasa Pharma Pvt. Ltd., Plot No. L-2 Additional MIDC, Satara - 415 004 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. P-II/MMD/278/2012 dated 30.11.2012 passed by the Commissioner(Appeals), Central Excise, Pune-II.

2. The case in brief is that the Applicant is engaged in the manufacture of Pharmaceutical products falling under CH 3004 and had exported their manufactured goods through Merchant Exporter i.e. M/s Uniword Pharama Pvt Ltd. by debiting the duty @ 10.30% in their Cenvat account. The exporter filed rebate claims of Rs. 6,44,610/- (in respect of one ARE-1) and Rs.17,17,320/- (in respect of 15 ARE-1s) with the Maritime Commissioner(Rebate), Central Excise, Mumbai-I. The Rebate sanctioning authority found that the exporter had exported the products 'P & P Medicaments' paying duty @ 10.30% under Notification No. 2/2008-CE dt. 01.03.2008 as amended and claimed the rebate of duty to that extent. Whereas it was found that the Notification No. 2/2008-CE dt. 01.03.2008 as amended, is a Notification whereby the Tariff rate has been amended and it is not the Notification prescribing the effective rate. The effective rate for the CHS 30 is 4.12 % under Notification No. 4/2006-CE dated 01.03.2006 as amended, which was not rescinded till then.

3. The Deputy Commissioner (Rebate), Mumbai-I vide Order-in-Original No. KII/444-R/2011(MTC) dated 24.08.2011 and Order-in-Original No. KII/325-R/2011(MTC) dated 05.08.2011, granted M/s Uniword Pharama Pvt Ltd, Merchant Exporter part amount of claim @ 4.12% amounting to Rs.2,57,843/- and Rs.6,86,927/- respectively under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 and for the remaining amount of Rs.3,86,767/- and Rs.10,30,393/- respectively, the exporter was directed to approach the respective jurisdictional Central Excise authority for refund as a cenvat credit. The

applicant filed the rebate claims for an amount of Rs. 3,86,767/- (Rupees Three Lakhs Eighty-Six Thousand Seven Hundred and Sixty-Seven Only) and Rs.9,70,044/- (Rupees Nine Lakhs Seventy Thousand and Forty-Four Only) respectively vide their application dated 27.01.2012 received by the department on 10.02.2012. The Deputy Commissioner, Central Excise, Satara Division, vide Order-in-Original No. Satara / 63 / ADJ / 2012 / R / 52 /2012 dated 30.04.2012 rejected the refund claims of Rs. 3,86,767/- and Rs. 9,70,044/- as time barred under Section 11B of the Central Excise Act, 1944.

4. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Pune-II who vide Order-in-Appeal No. P-II/MMD/278/2012 dated 30.11.2012 rejected their appeal and upheld the Order-in-Original dated 30.04.2012. The appellate authority while passing the impugned order observed that :-

4.1 there is no substance in the argument of the applicant that their refund claim is well within the time limit in view of the provisions of explanation clause (B)(ec) to Section 11 B of the Central Excise Act, 1944.

4.2 The Deputy Commissioner (Rebate), Central Excise, Mumbai -I's order is not a judgment, decree, order or direction of appellate authority, appellate tribunal or any court. Therefore, the claimant's plea that their refund claims are covered by the explanation clause (B)(ec) to Section 11B of the Central Excise Act, 1944 and are filed within the period of one year from the passing of the orders-in-original by the Deputy Commissioner (Rebate), Central Excise, Mumbai - I, is not acceptable.

4.3 Both the refund claims filed by the applicant are rightly covered under the clause (B) (f) of explanation to Section 11(B) of the Central Excise Act, 1944 or at the most under clause (B)(a)(i) of the explanation.

4.4 The applicant had exported their goods out of India through a Merchant Exporter, under claim of Rebate, mentioning the Rebate claiming authority as Maritime Commissioner (Rebate), Mumbai - IV on respective ARE-1s. Accordingly, Original claims for rebate were lodged by the merchant exporter with Maritime Commissioner. Now the present claims amounting to Rs. 3,86,767/- and Rs. 9,70,044/- are filed by the applicant themselves

with 'No Objection Certificates' from their Merchant Exporter. Hence, for all practical purposes, they are 'Fresh Claims' only.

4.5 In case the applicant or the Merchant Exporter were aggrieved by the contentions of the Orders in Original bearing No. KII/444-R/2011(MTC) dated 24.08.2011 and No. K-II/325-R/2011(MTC) dated 05.08.2011 both passed by the office of the Maritime Commissioner, Mumbai -I then the right course of action should have been to approach the concerned Commissioner (Appeals) for relief. The applicant had failed to explore the said procedure.

5. Aggrieved, the Applicant then filed the current Revision Application of the following grounds:

- (i) Export of goods is not in dispute.
- (ii) Rebate claim restricted with directions to approach to jurisdictional authority having jurisdiction over manufacturing unit to avail Cenvat Credit for differential duty cannot be treated as separate or fresh claim.
- (iii) Different views on same order in different commissionerates. In similar matter refund claim submitted at various authorities on the same grounds and against the same order in original have been sanctioned to them.
- (iv) The matter is already decided by Revision Authority in favour of M/s Cipla Ltd. Vide Order No. 1568-1595/2012-CX dated 19.11.2012.

5.1 The applicant further made an additional submission in the matter vide their letter dated 30.08.2019 whereby they have submitted that :-

- (i) Rebate claim restricted with directions to approach to authority having jurisdiction over manufacturing unit to avail Cenvat credit for differential duty cannot be treated as separate or fresh claim.
- (ii) That in similar matter refund claims submitted at various authorities on the same grounds and against the same Order-in-Original have been sanctioned to them. The details are as given below:

- (a) The Dy. Commissioner, Central Excise & Customs, Division Solapur vide OIO No. 02/CEX/2011-12 dated 20.04.2011.
- (b) The Dy. Commissioner, Central Excise & Customs, Division Vijayawada vide

(a) OIO No C.No.V/18/24/2012 dated 30.04.2012

(b) OIO No C.No.V/18/25/2012 dated 04.05.2012

(c) OIO No C.No.V/18/26/2012 dated 04.05.2012

- (iii) In similar matter, the Revision Authority has decided the matter in favour of M/s Cipla vide GOI No. 1568-1595/2012-CX dated 19.11.2012.
- (iv) They prayed the Order-in-Appeal dated 27.11.2012 and Order-in-Original dated 21.06.2012 be set aside and with directions to sanction the refund claims.

6. Applicant vide letter dated 29.10.2019 and dated 12.01.2021 waived off personal hearing and requested matter be decided as per previous GOI orders i.e.

- (i) Order No. 1568-1595/2012-Cx dated 19.11.2012
- (ii) Order No. 1318-1329/2013-Cx dated 15.10.2013
- (iii) Order No. 248-273/2014-Cx dated 21.05.2014
- (iv) Order No. 59-81/2018-Cx dated 14.11.2018

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

8. On perusal of the records, Government observes that in the instant case, the impugned goods were exported by the applicant and the benefit under rebate @ 10.30% of Central Excise duty paid was claimed by the Merchant Exporter. On scrutiny of the impugned rebate claims, The Maritime Commissioner observed that the effective rate of duty for the products cleared for exports attracted 4% duty under Notification No. 4/2006-CE dated 01.03.2006 (Sr. No. 62A to 63E) as clarified at para 3.1 of D.O.F. No. 334/1/2008-TRU dated 29.02.2008 issued by Joint Secretary

(TRU-I) in the Budget 2008-09. As such, the Maritime Commissioner restricted the rebate claims refundable in cash to Rs.9,44,770/- only and ordered that the balance amount of Rs. 14,17,160 is refundable as cenvat credit under proviso to Sub-section (2) of Section 11B of Central Excise Act, 1944. ~~The claimant was further directed to approach the respective~~ jurisdictional excise authorities who may allow to avail Cenvat credit to that extent, if deemed fit. As per the directions, the applicant approached jurisdictional authorities and requested vide their letters dated 27.02.2012 (received on 10.02.2012) for refund of Rs. 13,56,811 i.e. the balance amount. The adjudicating authority rejected the claim as being time barred. The appeal against the impugned Order in Original rejected by the appellate authority. Hence, the subject Revision Application has been filed by the applicant.

9. The Government observes in the instant case that impugned goods were exported on payment of duty beyond a shadow of doubt being expressed by any of the authorities. Since, it is accepted principle that no exported goods should suffer incidence of duty, the claimant was certainly eligible for rebate of duty paid on exported goods. The Government further observes that the effective rate of duty on impugned goods was 4.12% whereas the applicant cleared the said goods on payment of duty @ 10.30 % for export. The Government holds that it is settled law 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 exporter. As such, the excess amount of duty paid voluntarily i.e. 6.16%, not held admissible for being rebated under Rule 18 of CER, 2002, has to be allowed as re-credit in the Cenvat credit account as the amount collected without any authority of law cannot be retained and the same has to be returned to the Applicant in the manner it was paid. The Government notes that the applicant, vide their letter dated 27.02.2012, had requested the jurisdictional authorities to grant re-credit of excess duty paid by them on exported goods to the tune of Rs. 13,56,811/-. The impugned claim was filed in pursuance of the Order in Original passed by the Rebate Sanctioning Authority. In the instant case, the re-credit claim was

filed on 10.02.2012 i.e. well within one year of the said orders. As such, Government holds that the refund / re-credit claims were not hit by time limit in the instant case.

10. In view of the above, Government sets aside the impugned Order-in-Appeal No. ~~P-II/MMD/278/2012~~ dated ~~30.11.2012~~ and remands the case back to the original authority to process the impugned rebate claims afresh.

11. Revision Application is allowed in terms of above.

12. So, ordered.

Shrawan
26/02/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No \23/2021-CX (WZ) /ASRA/Mumbai DATED 26.02.2021

To,

M/s. Okasa Pharma Pvt. Ltd.,
(Now known as M/s Medispray Laboratories Pvt. Ltd),
Plot No. L-1/1 ,L-1,L-2, Additional MIDC,
Satara - 415 004

Copy to:

1. The Commissioner of CGST, Kolhapur, Vasant Plaza Commercial Complex, 4th & 5th Floor, Rajaram Road, Bagal Chowk, Kolhapur- 416 001.
2. The office of the Central Tax (Appeals-I), Pune, 'F' wing, 3rd floor, GST Bhavan, 41/A, Sassoon Road, Pune 411001.
3. The Assistant Commissioner, CGST, Division-I (Satara): P-11 /14 Old MIDC, Near Fulora Hotel Satara, Satara.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.