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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. 195/157/14-RA/1633

Date of Issue: 03.02.2021

ORDER NO. 124/2021-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. Watson Pharma Pvt. Ltd. (Unit-III),
Ambernath API Plant (100% EOU),
Plot No. N-15, Additional MIDC,
Anand Nagar, Ambernath (East),
Thane - 421 506.

Respondent: Commissioner, Central Excise, Thane-I.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PD/TH-I/10/2014 dated 18.02.2014 passed by the Commissioner(Appeals)-I, Central Excise, Mumbai Zone-I.

ORDER

~~This Revision Application has been filed by M/s. Watson Pharma Pvt.~~
Ltd. (Unit-III), Ambernath API Plant (100% EOU), Plot No. N-15, Additional MIDC, Anand Nagar, Ambernath (East), Thane – 421 506 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. PD/TH-I/10/2014 dated 18.02.2014 passed by the Commissioner(Appeals)-I, Central Excise, Mumbai Zone-I.

2. The case in brief is that the Applicant have an EOU unit situated at N-15, Additional MIDC, Anand Nagar, Ambernath (East), Thane – 421 506 and are engaged in the export of Pharmaceutical products falling under CH 29 of Central Excise Tariff Act, 1985. The applicant had exported their manufactured goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002. The applicant paid the duty through CENVAT credit account. The applicant had filed four (4) rebate claims for the total amount of Rs. 41,53,301/- (Rupees Forty One Lakh Fifty Three Thousand Three Hundred One Only) thereunder. On scrutiny of the impugned rebate claims, the rebate sanctioning authority observed from the Notification No. 24/2003-CE dated 31.03.2003 that the goods manufactured and cleared for export by 100% EOUs are fully and absolutely exempted from payment of duty and as per the provisions of Section 5A(1A) of the Central Excise Act, 1944, when the goods are absolutely exempted, the claimant are legally bound to avail the said exemption and have no option to clear the goods for export on payment of duty. The rebate sanctioning authority also observed that Rule 17 of the Central Excise Rules, 2002 lays down that the Cenvat Credit can be utilized by the 100% EOU only in respect of their DTA clearances on payment of duty. In view of these observations, the rebate sanctioning authority rejected the impugned rebate claims filed by the applicant vide Order in Original No. R-1267/2013-14 dated 30.08.2013.

3. The impugned Order in Original was contested by the applicant by filing appeal before the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I. The appellate authority vide Order in Appeal No. PD-TH-I/10/2014 dated 18.02.2014 confirmed that order in original. The appellate authority, while passing the order, observed that :-

3.1 The claimants are legally bound to avail the exemption under Notification No. 24/2003-CE dated 31.03.2003 and have no option to clear the goods for export on payment of duty.

3.2 The Rule 17 of the Central Excise Rules, 2002 lays down that the Cenvat Credit can be utilized by the 100% EOUs only in respect of DTA clearances on payment of duty.

3.3 The applicant is working under acts, rules & restrictions as well as facilities as made applicable to an export oriented undertaking and extracting benefits under the said rules, the Appellant is required to avail / follow the conditions prescribed under that acts and rules.

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

- (i) The Notification No. 24/2003-CE date 31.03.2003 issued under Section 5A(1A) of the Central Excise Act, 1944 is conditional in nature. The Notification does not grant absolute exemption and lays down procedural condition. Even if procedural conditions are required to be complied with, the notification cannot be considered as absolute exemption notification. As per said notification, the manufacturer is required to comply with procedural conditions to claim benefit of the notification. The Procedural condition stipulates that the goods have not been used for home consumption and they have been exported. Therefore, the said notification is not an absolute exemption notification and hence provisions of Section 5A(1A) do not apply.
- (ii) The restriction under Section 5A(1A) is only to prohibit availment of credit of duty on inputs. Assuming that this notification provides absolute exemption from levy of duty on clearances of goods from EOU to export, even then refund of duty paid on export is available to them.

- (iii) The CBEC vide Circular No. 940/1/2011-CX dated 14.01.2011 clarified that restriction is only for the purpose of availment of credit on the input. In case the exemption is allowed to them, the amount paid at the time of clearance of goods is in excess of the duty which is required to be paid and therefore refund of the excess duty paid shall be allowed under Section 11B of Central Excise Act.
- (iv) There is no prohibition under Rule 18 of the Central Excise Rules, 2002 for EOU to claim rebate on export of goods. They have complied with all the substantial conditions.
- (v) They have complied with substantial conditions to claim rebate of excise duty paid on export of goods. AS per Circular No. 510/06/2000-CX dated 03.02.2000, the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on export goods covered by a claim. The applicant relied on the following case laws :-
- a) Woco Motherson Elastomers Ltd. Vs. CCX, Noida – 2008(228) ELT 107 (Tri. Delhi).
 - b) CCE Vs. Indian Oil Corporation Ltd. 2004 (165) ELT 257 (SC)
- (vi) The Courts have held that there is no compulsion on the part of the assessee to avail an exemption notification, whether the exemption is a conditional one or not. The applicant had relied on following case laws in support of their argument.
- a) Bombay Dyeing & Mf. Co. Ltd. Vs. CCE- 2001 (135) ELT 1392 (Tri.)
 - b) Capital Impex (P) Ltd. 2010 (261) ELT 844 (Tri. Delhi)
- (vii) As per Circular No. 687/3/2003-CX dated 03.01.2003, rebate of duty paid from cenvat credit account for exported goods to be refunded in cash.
- (viii) Their own case in this matter is pending with the Hon'ble High Court. Hence requested to keep the matter in abeyance.
5. The personal hearing in the matter held on 25.02.2020 was attended on behalf of the applicant by Shri Karan Awtani, Chartered Accountant before my predecessor Revision Authority. The Applicant filed additional submissions vide letter dated 24.02.2020. It was submitted that in GST regime, an assessee is eligible for availment of credit of input tax credit only

of CGST, SGST and IGST paid on all inward supplies. Thus, if the re-credit is allowed to the applicant, the re-credit will accrue to the applicant but will not be allowed to be taken under GST as there is no provision which allow such re-credit. They have requested to allow any refund in cash only as per provisions of Section 142(3) of the GST Act, 2017. They have relied upon following judgements in support of their argument.

- a) Thermax Limited 2019 (2) TMI 1744-(Guj.)
- b) Oswal Castings Pvt. Ltd. 2018(24) GSTL 649 (Tri. Chan.)
- c) SMG International 2019(21)GSTL 446 (Tri. Chan.)

5.1 In view of change in the Revision Authority, personal hearings were fixed on 02.12.2020, 07.12.2020, 10.12.2020 and 27.01.2021. However, no one attended the personal hearings so fixed on above dates. As adequate opportunity for personal hearings in the matter has been given, the case is taken up for decision based on the available record.

6. Government has carefully gone through the relevant case records available in case file, perused the impugned Order-in-Original and Order-in-Appeal and submissions of the applicant.

7. Government notes that as per para 6.1 of chapter 6 of FT Policy 2009-14, Units undertaking to export their entire production of goods and services except permissible sales in DTA, have been allowed to set up units under EOU scheme, EHTP/STP/BTP schemes. The applicant, being 100% EOU, is required to export entire production of goods & services out of India except the permissible sales in India. As such, the exemption from payment of duty in terms of Notification No. 24/2003-C.E., dated 31-3-2003 is applicable to the applicant which is a 100% Export Oriented Undertaking.

8. From perusal of records, Government observes that the applicant a 100% EOU Unit which exported certain consignments on payment of duty and filed rebate claims which were rejected by the lower authorities that as the applicant being 100% EOU Unit, is not required to pay duty as per provisions of Section 5A(1) of Central Excise Act, 1944 read with Notification No. 24/2003-C.E., dated 31-3-2003.

8.1 The Notification No. 24/2003-C.E., dated 31-3-2003 under which the applicant Unit was working, reads as under :

"In exercise of the power conferred by sub-section (1) of Section 5A of Central Excise Act, 1944, (1 of 1944), read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby,-

- (a) exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of excise leviable thereon under Section 3 of Central Excise Act, 1944 (1 of 1944) and additional duty of excise leviable thereon under Section 3 of Additional Duty of Excise (Goods of Special Importance) Act, 1957(58 of 1957) and additional duty of excise leviable thereon under the Section 3 of Additional Duty of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);....."*

Therefore, by virtue of this Notification, the goods manufactured in an 100% EOU is exempted from whole of duty of :

- (a) excise leviable thereon under Section 3 of Central Excise Act,
- (b) additional duty of excise leviable thereon under Section 3 of Additional Duty of Excise and (Goods of Special Importance) Act, 1957 and
- (c) Additional duty of excise leviable thereon under the Section 3 of Additional duty of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978)

The Government notes that this notification does not require fulfilment of any condition for seeking the exemption in the matter of exports to any country. The exemption is absolute, unconditional without any string attached to it.

8.2 The only proviso to this Notification is that the exemption is not applicable to such goods if brought to any other place in India. This means that this exemption is not available to the goods cleared for home

consumption. The instant case is regarding export goods and for all the exported goods said exemption is available. There is no condition specified therein for availing exemption on export goods. Hence this Notification No. 24/2003-C.E., dated 31-3-2003 is absolute, and unconditional for export goods and rightly covered under Section 5A(1A) of Central Excise Act, 1944 which reads as under :

“(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon :

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured (i) in a free trade brought to any other place in India; Zone or a special economic zone and or by a hundred per (ii) brought to any place in cent export-oriented undertaking and India.

Explanation:

(1A) for removal of doubts, it is hereby declared that where an exemption under sub section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.”

8.3 Thus, the Government holds that the applicant, being 100% EOU and as per Explanation 1(A) to Section 5A of Central Excise Act, 1944, has no option to pay Central Excise Duty since Notification No. 24/2003-C.E.(N.T.), dated 31-3-2003 issued under Section 5A(1) of Central Excise Act, 1944 granted unconditional exemption from whole of duty in this case.

8.4 The Rule 17 of Central Excise Rules, 2002 was amended vide Notification No. 18/04-C.E.(N.T.) dated 6-9-2004 to allow EOU/EHTP/STP Units to allow payment of duty on removal of goods in DTA from Cenvat Credit Account also. Since the duty is to be paid only on DTA sales the Cenvat credit can be utilized only for DTA Sales.

8.5 The Notification No. 24/2003-C.E., dated 31-3-2003 was issued under Section 5A(i) of Central Excise Act, 1944. The goods manufactured by 100% EOU and cleared for export are exempted from whole of duty unconditionally. Therefore, in view of provisions of sub-section (1A) of Section 5A, the applicant (100% EOU) has no option to pay duty. Government notes that there is no condition for availing exemption from payment of duty on goods cleared for exports. Normally the 100% EOU has to clear goods for exports as per the EOU scheme. Since there is no condition in the notification for availing exemption to goods manufactured by 100% EOU and cleared for export, the provisions of sub-section (1A) of Section 5A (1) are applicable and no duty was required to be paid on such export goods. As such rebate claims were rightly held by Commissioner (Appeals) to be inadmissible in terms of Rule 18 of Central Excise Rules, 2002. Government finds support from the observations of Hon'ble Supreme Court in the case of *M/s. ITC Ltd. v. CCE* reported as 2004 (171) E.L.T. 433 (S.C.), and *M/s. Paper Products v. CCE* reported as 1999 (112) E.L.T. 765 (S.C.) that the simple and plain meaning of the wordings of statute are to be strictly adhered to.

8.6 C.B.E. & C. has also clarified vide letter F. No. 2009/26/2009-CX, dated 23-4-2010 (para 2) as under:-

"The matter has been examined, Notification No. 24/2003-C.E., dated 13-3-2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A(1A) of the Central Excise Act, 1944 EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

9. In view of above position, the Government holds that rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

10. The applicant vide letter dated 24.02.2020 has requested to allow re-credit of Cenvat credit as cash refund in terms of Section 142(3) of the CGST Act, 2017. The Government notes that request to allow re-credit of cenvat amount is not part of the revision application. Therefore, this cannot be raised at this stage. Further, present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944 and must be

exercised within the framework of the Central Excise Act, 1944. The Provisions of the CGST Act, 2017 are not exercisable in revision proceedings.

11. In view of the above, Government finds no infirmity in the impugned Order-in-Appeal No. PD/TH-I/10/2014 dated 18.02.2014.

12. Revision Application is rejected in above terms.

Shrawan
26/02/21
(SHRAWAN KUMAR)

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

ORDER No 24/2021-CX (WZ) /ASRA/Mumbai DATED 26.02.2021

To,

M/s. Watson Pharma Pvt. Ltd. (Unit-III),
Ambernath API Plant (100% EOU),
Plot No. N-15, Additional MIDC,
Anand Nagar, Ambernath (East),
Thane - 421 506.

Copy to:

1. The Commissioner of CGST, Thane Rural Commissionerate, 4th floor, Utpad Shulk Bhavan, Plot No. 24-C, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051.
2. The office of the CGST, Thane Appeals, 12th floor, Lotus Info Centre, Near Parel Station (East), Mumbai - 400 012.
3. The Assistant Commissioner, CGST, Division-V, Thane Rural Commissionerate, Vardan Trade Centre, M.I.D.C., Wagle Industrial Estate, Thane (W)-400604.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.