

REGISTERED

SPEED POST

F.No. 198/655/11-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..... 4/11/13

Order No. 1288 / 2013-CX dated 01.10.13 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 Applications filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal No.TKG/08/LTU/MUM/2011 Dt. 26.07.2011 passed by Commissioner of Central Excise (Appeals), LTU, Mumbai-III.

Applicant : Commissioner of Central Excise, Mumbai -III

Respondent : M/s. Lupin Ltd., Mumbai

ORDER

This revision application is filed by the Commissioner of Customs, Central Excise & Service Tax (LTU), Mumbai-III against orders-in-appeal No. TKG/08/LTU/MUM/201 dated 26-07-2011 passed by Commissioner of Central Excise (Appeals), LTU, Mumbai-III with respect to Orders-in-Original passed by the Deputy Commissioner of Central Excise, Mumbai. M/s. Lupin Ltd. is the respondent in this case.

2. Brief facts of the case are that M/s Lupin Ltd., were procuring duty paid pharmaceutical products from third parties and exporting to same as a merchant exporter. The respondent filed various rebate claims amounting to Rs. 5,46,855/- for goods cleared for export under various ARE-1s., under Rule 18 of the Central Excise Rules, 2002. The adjudicating authority observed that the transaction value under section 4 as per the impugned AREs-I was more than FOB value shown in respective shipping bills, but, the value mentioned in the shipping Bills corresponding to the FOB value were to be accepted as transaction value. Accordingly, the amount of duty payable to FOB value mentioned a Shipping Bills amounting to Rs. 4,94,431/- was refunded by cash and the balance of Rs 52,424/- was recredited in Cenvat Credit Account by adjudicating authority vide impugned order-in-original.

3. Being aggrieved by the said order-in-original, respondent filed appeal before commissioner (Appeals) who set aside the order-in-original and decided the case in favour of respondent.

4. Being aggrieved by the impugned order-in-appeal, the applicant Department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Earlier, on the similar issue, in the Revenue's revision application, the Revision authority has issued an order dated 26.4.2011 in Revision application F.No. 198/155/2009-RA, in the case of M/s. Lupin Ltd., is discussing the issue of excess duty. The said order states that, the "whole duty of excise would mean the duty payable under provisions of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the amounts cannot be retained by government without authority of law."

4.2 The commissioner (Appeals), failed to consider the judgment dated 11.09.2008 of Punjab & Haryana High Court in the matter of M/s. Nahar Industrial Enterprise Ltd. V/s UOI in CWP No 2235/2007 which dealt the similar issue. In this case the Assistant Commissioner had allowed the Petitioner a cash rebate of Excise duty which was deposited by actual credit and for the remaining amount was debited from its Cenvat credit account; the same was allowed to be re-credited to the petitioner's CENVAT accounts. The High Court of Punjab & Haryana, dismissed the said WP filed for relief of refund of the balance amount as cash and not as CENVAT credit. The said High Court order is also a later order as compared to the Tribunal decision in the case of M/s. Sidhhartha Tubes Vs. CCE Indore reported in 1999 (114) ELT-1000. The facts of the present case and the case before the P & H High Court are similar, and hence the order of Commissioner (Appeals) is not sustained

5. A Show Cause notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. No reply received from the respondent.

6. Personal hearing scheduled in this case on 07-08-2013 was attended by Shri R.K. Sharma, Sr. Advocate, & Sh. S. Thomas, G.M., M/s Lupin Ltd. on behalf

of the respondent and stated that Order-in-Appeal being legal and proper may be upheld. Nobody attended hearing on behalf of deptt.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. Government notes that in the instant case respondent a manufacturer exporter claimed rebate of duty of paid on exported goods as per relevant Central Excise invoice and ARE-1. On scrutiny of rebate claim it was observed that in some cases, FOB value declared on the shipping bill was less than ARE-1 value. Adjudicating authority restricted the rebate claim to the amount of duty payable on FOB value mentioned in Shipping Bills on the ground that FOB is the amount to be paid by buyer to the exporter and therefore FOB value was to be accepted as transaction value in terms of section 4 of CEA, 1944. However, in appeal proceedings, Commissioner (Appeal) allowed the payment of rebate of total duty amount of as mentioned by the respondent. He relied upon CBEC circular No.510/06/2000-Cx dated 3.2.2000 and 203/37/96-CX dated 26.4.1996. Now, applicant department has filed this revision application on the grounds stated in para 4 above.

9. Government notes that the appellate authority which deciding the case mainly relied upon CBEC's Circular No. 510/06/2000-Cx dtd. 03.02.2000 and 203/37/96-Cx dtd. 26.04.1996. Government notes that w.e.f. 1.7.2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act. Though the CBEC circular 203/37/96-Cx dated 26.4.96 was issued when transaction value concept was not introduced yet the said circular clearly states that AR4 value of excisable goods should be determined under section 4 of Central Excise Act, 1944 which is required to be mentioned on the Central Excise invoices. Even now the ARE-1 value is to be the value of excisable goods determined under section 4 of Central Excise Act,1944 i.e. the transaction value

as defined in section 4(3)(d) of Central Excise Act. CBEC has further reiterated in its subsequent circular No.510/06/2000-Cx dated 3.2.2000 that as clarified in circular dated 26.4.96 the AR4 value is to be determined under section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of rule 12 and 13 of Central Excise Rules. The AR4 and rule 12/13 are now replaced by ARE-1 and rule 18/19 of Central Excise Rules, 2002. Further the CBEC circular dated 26.4.96 has also clarified in its para 2 that FOB value is normally a contracted price in the course of international trade. The original authority has found the FOB value as transaction value of the goods. The Central Excise duty is required to be paid on the transaction value determined under section 4(1) (a) and any amount paid in excess of duty payable cannot be treated Central Excise duty collected under provision of Central Excise Act. No documentary evidence is produced by the respondent to claim that ARE-1 value is the transaction value and that FOB value mentioned on shipping Bill cannot be treated as transaction value as held by the original authority.

10. Government notes that a amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent 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 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."

Government notes that the original authority has complied with the above order of Hon'ble High Court and recredited the excess amount in Cenvat account of respondent. As such order-in-original is legal and proper and hence required to be upheld.

11. In view of above circumstances, Government sets aside the impugned order-in-appeal and restores the impugned order-in-original.

12. The revision application thus succeeds in terms of above.

13. So ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Central Excise,
Customs & Service Tax,
Large Taxpayer Unit (LTU),
29th Floor, Centre -I, World Trade Centre,
Cuffe Parade, Mumbai- 400 005.

Attested




(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C. E. & S. T. OSD (Revision Application)
कार्यालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Revenue)
सरकार/Govt. of India
दिल्ली/NEW Delhi

GOI Order No. 1288/13-CX dated 01.10.2013

Copy to:

1. M/s. Lupin Ltd. 159, CST Road, Kalina, Santacruz, Mumbai- 400 098.
2. The Commissioner of Central Excise & Customs (Appeals), Central Excise & Service Tax, Large Taxpayer Unit (LTU), 29TH Floor, Centre-I, World Trade Centre, Cuffe Parade, Mumbai- 400 005.
3. The Deputy Commissioner of Central Excise (Rebate), Central Excise, Mumbai-III, 3rd Floor, Vardaan Trade Centre, M.I.D.C., Wagle Industrial Estate, Thane (West) – 400 604.
4. Guard File
5. PS to JS (RA)
6. Spare Copy


3/10
(B.P. SHARMA)
OSD (RA)

