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SPEED POST



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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/176/13-RA/5512

Date of Issue: 28.11.19

ORDER NO. 138/2019-CX (WZ) /ASRA/MUMBAI DATED 31.10.2019
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 Meditab Specialities Pvt. Ltd.

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/415 &
416/M-1/2012 dated 09.11.2012 passed by the Commissioner
(Appeals) of Central Excise, Mumbai Zone-I.

ORDER

This revision application has been filed by the applicant M/s Meditab Specialities Pvt. Ltd., Mumbai, (hereinafter referred to as 'the applicant') against Order-in-Appeal No. BR/415 & 416/M-I/2012 dated 09.11.2012 passed by the Commissioner (Appeals) of Central Excise, Mumbai Zone-I.

2. Brief facts of the case are that the applicant, an exporter, filed rebate claim for Rs.23,433/- (Rupees Twenty Three Thousand Four Hundred Thirty Three only) of duty paid on exported goods viz. P & P Medicaments, under Rule 18 of the Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The exporter had paid duty on said exported goods @ 10.30% under Notification No 2/2008-CE dated 01.03.2008 as amended. Whereas it was found that the Notification No 2/2008-CE dated 01.03.2008, as amended was a Notification whereby the tariff rate had been amended and it was not the Notification prescribing the effective rate. The effective rate for the said goods exported by the exporter during the relevant period was 5.15% under Notification No 4/2006-CE dated 01.03.2006 as amended w.e.f. 01.04.2011. Order in Original No. KII/663-R/2012 (MTC) dated 01.08.2012, held that duty was required to be paid on exported goods at the effective rate of duty in terms of the said Notifications as amended and accordingly sanctioned rebate of duty amount of Rs.11,716/- (Rupees Eleven Thousand Seven Hundred and Sixteen only) @ 5.15 %, refundable in cash for the products exported by the applicant. The original authority also held that as the goods cleared under ARE-1 have been exported to the foreign destinations, therefore, remaining balance of duty of Rs.11,717/- (Rupees Eleven Thousand Seven Hundred and Seventeen only) is also refundable under (a) proviso to Sub-section (2) of Section 11B, *ibid* as a Cenvat Credit and for this purpose, exporter should approach to the Excise authorities having jurisdiction over the manufacturer's premises who may allow to avail CENVAT credit to the extent, if deemed fit, as the Maritime Commissioner has no jurisdiction to allow the same directly.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioners of Central Excise (Appeals), who vide Order-in-Appeal No. BR/415

& 416/M-I/2012 dated 09.11.2012 (impugned Order) upheld the Order-in-Original.

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

- 4.1 When two Notifications which are not mutually exclusive co exist in the books of law, the assessee has option to choose any one of them.
- 4.2 Both Notification No. 2/2008-C.E., dated 01.03.2008 and Notification No. 4/2006-CE., dated 01.03.2006 co-exist in the books of law and are mutually exclusive.
- 4.3 They are entitled to entire refund of duty paid on goods exported.
- 4.4 Assessment of goods being finalised, refund of duty cannot be denied.
- 4.5 The matter is already decided by Revisionary authority vide Order No. 1568-1595/2012-CX dtd. 04.11.2012 and matter may be decided accordingly.

5. Personal hearing in this case was scheduled on 21.08.2019. However, the applicant vide written submissions dated 22.08.2019 informed that similar issue in respect of Revision Application filed by M/s Cipla Limited has been decided by Government of India vide Order No. 1568-1595/2012-CX dtd. 04.11.2012 and 59-81/2018-CX/ASRA/Mumbai dated 16.03.2018 and that they are not attending personal hearing and requested to decide their Revision Application in consideration of these GOI decisions and aforesaid submissions.

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

7. Upon perusal of records, Government observes that the applicant filed rebate claim of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. The applicant had paid duty on said exported goods @ 10.30% under Notification No. 2/2008-CE dated 01.03.2008 as amended. The original authority held that duty

was required to be paid on exported goods at the effective rate of duty payable @ 5.15 % and rebate had been allowed to that extent only and for the remaining duty the applicant was directed to approach Excise authorities having jurisdiction over the manufacturer's premises who would allow the CENVAT credit of the same. The Commissioner (Appeals) upheld the Order-in-Original restricting rebate to payment of duty @ 5.15 %. Now, the applicants have filed these revision applications against the impugned Order-in-Appeal on the grounds stated above.

8. Government observes that the aforementioned issue stands decided in an identical case of M/s Cipla Limited vide GOI order No. 1568-1595/2012-CX dated 04.11.2012. After discussing the issue at length, the Government at para 9 & 10 of its Order observed as under :-

9. *In view of position explained in foregoing para, Government finds that there is no merit in the contentions of applicant that they are eligible to claim rebate of duty paid @ 10% i.e. General Tariff rate of duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption notification No.4/06-CE dated 01.03.2006 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5 % in terms of Notification No. 4/06-CE dated 01.03.2006 as amended, on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944.*
10. *In view of above discussion, Government observes that in the instant cases rebate claims are admissible of the duty paid at effective rate of duty @ 4% or 5% in terms of Notification No. 4/06-CE dated 01.03.2006 as amended, on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per of Notification No. 4/06- is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the cases discussed in para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in para 8.8.3 above, the excess paid amount is to be returned / adjusted in Cenvat Credit account of assessee. Moreover, Government cannot*

retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat Credit account of the concerned manufacture.

9. Government further observes that the same view is taken by the Revisionary Authority in its subsequent Orders No. 41-54/2013-CX., dated 16.1.2013 and Order No. 1318-1329/2013 – CX dated 15.10.2013 reported in 2014 (313) E.L.T. 954 (G.O.I.) and 2014 (311) E.L.T. 833 (G.O.I.) and 59-81/2018-CX/ASRA/Mumbai dated 16.03.2018 respectively, in the case of M/s Cipla Limited.

10. Further, while dismissing Writ Petition No. 2693 of 2013 filed by M/s Cipla Limited against Revisionary Authority's Orders No. 41-54/2013-CX., dated 16.1.2013 referred above, Hon'ble Bombay High Court vide its order dated 17.11.2014 observed as under:

8. *The question was of the amount paid in excess of duty at the above effective rate and in terms of the Notification. The Revisional Authority referred to such sum being lying with the Government as a deposit. The judgments of Punjab & Haryana High Court were referred and the opinion was that the Government cannot retain the amount paid without any authority of law. The direction to allow the amount to be re-credited in the Cenvat credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the Order-in-Original was modified by the Joint Secretary (Revisional Authority), what is the material to note is that relief has not been granted in its entirety to the first respondent. The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has made which can be construed as a positive direction or as a command as is now being understood. It was an observation made in the context of the amounts lying in excess. How they are to be dealt with and in what terms and under what provisions of law is a matter which can be looked into by the Government or even by the Commissioner who is before us. That on some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto*

particularly when that it is in favour of the authority. For all these reasons, the Writ Petition is misconceived and disposed of.

11. The ratio of the case laws discussed above also confirms that the issue involved in this case i.e. the amount of duty paid in excess of duty payable at effective rate of 5.15% i.e., Rs.11,717/- (Rupees Eleven Thousand Seven Hundred and Seventeen only) is to be treated as voluntary deposit made by exporter applicant with the Government. The excess paid amount may be allowed to be re-credited in the CENVAT credit account of the manufacturer subject to compliance of the provisions of Section 12B of Central Excise Act, 1944. The impugned order is modified to this extent.

12. These revision applications are disposed of in terms of above.

13. So ordered.

(SEEMA ARORA)

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

ORDER No. 138/2019-CX (WZ) /ASRA/Mumbai Dated 31.10.2019

To,

M/s Meditab Specialities Pvt Ltd.
12 Gunbow Street, Fort,
Mumbai 400 001

Copy to:

1. The Commissioner of CGST, Mumbai South Commissionerate, Air India Building, Nariman Point, Mumbai 400021.
2. The Commissioner of CGST, Mumbai (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, 400 012.
3. Assistant Commissioner (Rebate), CGST, Mumbai South Commissionerate, Air India Building, Nariman Point, Mumbai 400021.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.