SPEED POST

F.No. 195/39/2019-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 16/6/21

Order No. 146/2021-CX dated 16-06-2021 of the Government of India, passed by **Sh. Sandeep Prakash,** Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CHD-EXCUS-001-APP-107-2019-20 dated 29.07.2019 passed by the Commissioner (Appeals), CGST, Panchkula.

Applicants : M/s Coral Drugs Pvt. Ltd., Sonepat.

Respondent : Commissioner of CGST, Rohtak.

****

ORDER

A revision application no. 195/39/2019-R.A. dated 03.05.2019 has been filed by M/s Coral Drugs Pvt. Ltd., Sonepat (hereinafter referred to as the Applicant) against the Order-in-Appeal no. Appeal/ST/PKL/219/2018 dated 15.01.2019, passed by the Commissioner (Appeals), CGST, Panchkula, vide which the Commissioner (Appeals) has upheld the Order-in-Original no. R-48/CT/AC/SNP/2017 dated 23.10.2018 passed by the Deputy Commissioner, Sonepat.

2. Brief facts of the case are that the Applicants were engaged in the manufacture of Fluticason Propionate under Chapter 29 of the Central Excise Tariff Act, 1985. They exported these goods, vide ARE-I no. 07/Coral drugs/17-18 dated 22.06.2017, under Rule 18 of the Central Excise Rules, 2002. These goods were re-imported by the Applicants, vide Bill of Entry no. 3984395 dated 13.11.2017 and a credit note dated 25.11.2017 was issued to their buyer. The Applicants again exported these goods, vide invoice nos. 179 dated 22.01.2018 and 233 dated 28.03.2018, both under Letter of Undertaking (LUT) under Rule 96A of the CGST Rules, 2017. The Applicants filed a rebate claim of Rs. 6,66,750/- on 25.04.2018 in respect of ARE-I no. 07/Coral drugs/17-18 dated 22.06.2017 under Rule 18 of Central Excise Rules, 2002. The rebate claim was rejected by the original authority on the ground that since the goods exported vide the said ARE-I were re-imported by the Applicants, it implied that the export was not completed. Further, the goods were exported again under LUT, as prescribed under Rule 96A of the CGST Rules, 2017, the export benefit, if any, would be available to them under the CGST Rules and not Central Excise Rules. Aggrieved, the Applicants filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, observed that the goods exported on

payment of duty had been re-imported and a credit note had been issued. Hence, the export of goods had not been completed. Accordingly, the appeal was rejected.

3. The Applicants have filed this revision application on the ground that they are claiming the rebate of the goods exported earlier on 22.06.2017 after payment of central excise duty under Rule 18 of Central Excise Rules, 2002. Hence, they are entitled for rebate claim under Central Excise Rules. The exported goods were re-imported due to some reasons at the buyers end and the same were exported again under LUT, as prescribed under Rule 96A of the CGST Rules, 2017. Section 142 of CGST Rules, 2017 stipulates that if the central excise duty has been paid for any goods at the time of their removal not earlier than six months prior to the appointed day i.e., 01.07.2017, the refund of the duty shall be in accordance with the provisions of the existing law (Central Excise Law, in this case) if the goods are returned within a period of six months from 01.07.2017 and such goods are identifiable to the satisfaction of the proper officer. A substantive benefit cannot be denied on the basis of technicality.

4. Personal hearing was held on 14.06.2021, in virtual mode. Sh. Prabhat Kumar, Advocate, appeared for the Applicants. He reiterated the contents of the revision application. He specifically highlighted that the export had been completed in the first instance and all conditions of Rule 18 read with notification no. 19/2004-CE (NT) are fulfilled. Upon reimport, IGST was paid but at the stage of re-export IGST refund was not obtained. Therefore, it is not a case of double benefit. He also stated that the case is squarely covered by the transitional provisions under Section 142 of the CGST Act, 2017. Sh. D.S. Chauhan, AC, appeared for the respondents and supported the decisions of the lower authorities.

5. The Government has examined the matter. The issue involved in this case is whether the rebate of Central Excise duty paid in respect of exported goods would be admissible when the goods were exported before advent of CGST regime but rebate claimed after it. The factum of export is not in dispute. However, as the goods were reimported and a credit note was issued against the proceeds realised, the lower authorities have taken a view that the export was not complete. As per section 2(18) of the Customs Act, 1962, "*'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India*". In the present case, the goods were taken out of India and reached buyer's place who returned them. Thus, it is clear that goods had been taken to and had reached a place outside India. Subsequent reimport of goods would not change this factual position. Another aspect that weighed on the Commissioner (Appeals) to hold that the export was not complete is that a credit note was issued against the export proceeds. The Government observes that this observation has no basis in law in as much as there is no condition in Rule 18 and the notification no. 19/2004-CE requiring realisation of export proceeds as a condition precedent to export being treated as complete or for grant of rebate under Rule 18. Hence, the findings of Commissioner (Appeals) on this count cannot be sustained. Further, the Applicants have correctly drawn attention to the provisions of Section 142(1) of the CGST Act, 2017 which provide for refund of Central Excise duty paid in accordance with the Central Excise Law if the Central Excise Duty had been paid for any goods at the time of their removal not earlier than six months from the appointed date i.e. 01.07.2017 and if the goods are returned within a period of six months from 01.07.2017 and are identifiable to the satisfaction of proper officer. In the present case, the goods were removed for export on payment of Central Excise duty on 22.06.2017 (i.e. not earlier than six months

from 01.07.2017) and were imported back on 23.11.2017 (i.e. within six months from 01.07.2017). There is also no dispute regarding the identity of goods. The Government further observes that upon import, IGST was paid and no refund of IGST, so paid, has been claimed. Therefore, sanction of rebate of Central Excise duty paid will also not lead to any double benefit. In these facts and circumstances, the Government holds that the rebate claim is admissible.

6. In view of the above, the revision application is allowed with consequential relief.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Coral Drugs Pvt. Ltd.,
55-56-57, HSIIDC, Ind. Estate,
Murthal, Sonepat.
G.O.I. Order No. 146/21-CX dated 16-6-2021

Copy to: -

1. The Commissioner of CGST, Rohtak.
2. The Commissioner (Appeals), CGST, Panchkula.
3. M/s. Rajesh Kumar & Associates (Advocates & Consultants), 601, SG Alpha Tower-II, Sector 9, Vasundhara, Ghaziabad, UP.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER (R.A.)