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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.195/696/13-RA / 222

Date of Issue: 03/05/2018

ORDER NO. 146 /2018-CX (WZ)/ASRA/MUMBAI DATED 27-04-18 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE
CENTRAL EXCISE ACT, 1944.

Applicant : M/s Aarti Industries Ltd, 71, Udyog Kshetra, 2nd Floor, Mulund-
Goregaon Link Road, Mumbai - 400080.

Respondent : Deputy Commissioner of Central Excise (Rebate), Mumbai-III.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. BR/60/MI/2013
dated 28.03.2013 passed by the Commissioner of Central Excise
(Appeals-I), Mumbai Zone-I.



ORDER

This revision application is filed by M/s Aarti Industries Ltd, 71, Udyog Kshetra, 2nd Floor, Mulund-Goregaon Link Road, Mumbai - 400080 against (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/60/MI/2013 dated 28.03.2013 passed by the Commissioner of Central Excise (Appeals-I), Mumbai Zone-I.

2. The issue in brief is that the applicant had exported goods on payment of Central Excise Duty and filed 17 rebate claims amounting to Rs. 12,42,799/-. The original adjudicating authority rejected the rebate claims vide Order in Original No. KII/725-R/2012 (MTC) dated 31.08.2012 on the ground that the goods which were exported, were exempted under Notification No. 4 /2006-CE dated 01.03.2006. The original adjudicating authority rejected the rebate claim on the following grounds:-

- (a) The goods were exempted under Notification No. 4/2006-CE dated 01.03.2006 at Sr. No. 47 (A) and that there is no condition prescribed against the said entry. Thus, it is amply clear that the exemption is granted absolutely/unconditionally.
- (b) As per the provisions of sub-section 1A of Section 5A of the Central Excise Act, 1944, the manufacturer shall not pay the duty where exemption has been granted absolutely. Therefore, the amount paid by the manufacturer Exporter on the said exported goods cannot be termed as duty of Central Excise under Rule 3 of Cenvat Credit Rules, 2004. Thus they are ineligible for rebate as claimed by them. As regards the issue of re-credit of the amount paid erroneously, as the Maritime Commissioner of Central Excise, Mumbai-I, have no jurisdiction over the manufacturing unit situated at Boiser-II Division, Thane-II Commissionerate, hence re-credit cannot be granted. Moreover, this aspect is beyond the scope of present proceedings. The Manufacturer



Exporter may take up their case regarding re-credit before the concerned jurisdictional Deputy Commissioner.

3. Being aggrieved by the above mentioned Order-in-Original the applicant filed appeal before Commissioner (Appeals) -I, Central Excise, Mumbai Zone-I. The Commissioner (Appeals) -I rejected the appeal of the applicant vide the impugned order and upheld the Order in Original.

4. Being aggrieved, the applicant filed revision application against the impugned Order in Appeal on following grounds:

- 4.1 The product exported by the applicant is bulk drug and classifiable under Sr. No. 47 B of Notification No. 4/2006-CE dated 01.03.2006. Goods manufactured and exported is bulk drug and not a drug or medicine but same is used in the manufacture of drug/medicine. It is clearly evident from the license, brochure and certificates attached to the revision application that the goods which were exported were bulk drugs which was not unconditionally exempted under Notification No. 4/2006-CE dated 01.03.2006.
- 4.2 The applicant was clearing the impugned goods in domestic market either on payment of Central Excise duty or without payment of duty against Annexure -45.
- 4.3 The Notification No. 4/2006-CE dated 01.03.2006 issued under sub-section 1A of Section 5A of the Central Excise Act, 1944 does not grant absolute exemption.
- 4.4 The Courts have held that there is no compulsion on the part of the assessee to avail an conditional exemption notification. They have placed reliance on many case laws in this regard.
- 4.5 The ground raised by the Commissioner (Appeals) that the applicant did not make an appeal against the endorsement on the triplicate copy of ARE-1, is not tenable. ARE-1 is not an appealable order. The impugned order is beyond the scope of Show Cause Notice.



4.6 The findings of the Commissioner (Appeals) that the goods have been classified vide Notification No. 4/2006-CE dated 01.03.2006 instead of Central Excise Tariff is erroneous.

4.7 If rebate claim is denied, the same should be allowed as re-credit.

The officer considering the rebate can neither sit in appeal over the assessment order nor can be review the assessment order. ER-1 returns are an assessment order wherein details of the product as well as duty payment details are incorporated. As long as order of assessment stands the duty would be payable as per that order of assessment. Correctness of the assessment cannot be challenged in the proceedings related to rebate claim based on the said payment of duty.

5. A personal hearing in the case was held on 26.02.2018. Shri Prasannan S. Namboodiri, Advocate and Shri D.B. Bhalerao, Consultant appeared for personal hearing on behalf of the applicant and Shri A.N. Kamble, Supdt. Div. IV, CGST, Navi Mumbai Commissionerate appeared on behalf of the respondent. The applicant reiterated the submissions filed in the revision application and placed reliance on the orders of Commissioner (Appeals) and Additional Commissioner, Central Excise, Thane II on the same issue and pleaded that the impugned Order in Appeal be set aside and the revision application be allowed.

6. Government has carefully gone through the relevant case records available in case files, oral submissions and perused the impugned Order-in-Original and Order-in-Appeal. The question to be decided in the instant case is whether the goods cleared by the applicant for export on payment of duty under claim of rebate were unconditionally exempted under Clause (B) of Sr. No. 47 of Notification No. 4/2006-CE dated 01.03.2006 and as to whether the applicant is entitled to rebate claims on such exports.



7. The Government finds that the provisions of Notification No. 4/2006-CE dated 01.03.2006 at Sl. No. 47 of provides as under :-

Notification**New Delhi, the 1st March 2006.****No. 4 /2006-Central Excise****10 Phalgun, 1927 (Saka)**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation.-For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

Table

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
47	28, 29, 30 or 38	The following goods, namely: (A) Drugs or medicines including their salts and esters and diagnostic test kits, specified in List 3 or List 4 appended to the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), No.21/2002-Customs, dated the 1st March, 2002, (G.S.R. 118(E), dated the 1st March, 2002) (B) Bulk drugs used in the manufacture of the drugs or medicine at (A) above	Nil Nil	-- 2

ANNEXURE

Condition No.	Conditions
2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed



8. From the above, Government notes that Sl.No. 47 of the aforesaid Notification intend to grant absolute exemption in cases of goods falling under category (A) and conditional exemption to goods falling under category (B) i.e Bulk Drugs.

9. Government further observes the Original authority in his order in original held that the subject goods covered by the relevant ARE 1s were exempted under Notification No. 4/2006-CE dated 01.03.2006 at SR.No. 47 (A) [as these products were appearing in the list 3 & 4 appended to Notification No. 21/2002-Cus. Dated 01.03.2002] and that there is no condition prescribed against the said entry. Thus it is clear that the exemption is granted absolutely / unconditionally. Original authority further observed that as per the provisions of sub section 1 A of Section 5A of the Central Excise Act, 1944, the manufacturer shall not pay the duty where exemption has been granted absolutely. Therefore, the original authority held that the amount paid by the manufacturer Exporter on the said exempted goods cannot be termed as duty of Central Excise under Rule 3 of the Cenvat Credit Rules, 2004 and thus the applicant is ineligible for the rebate as claimed by them. Government also finds that the Board Circular No. 60/2003-Cus dated 16.07.2003 reads as under :-

Drugs — Bulk drugs used in manufacture of Salts and Esters of drugs and medicines — Exemption under Notification No. 21/2002-Cus.

*Circular No. 60/2003-Cus., dated 16-7-2003
F.No. 528/47/2003-Cus.(TU)*

*Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi.*

Subject : Eligibility of Salts & Esters of drugs and medicines under Notification NO. 21/2003-Cus. (Sl. 80), dated 1-3-2002.

I am directed to refer to the subject mentioned above and to say that a doubt has been raised as to whether bulk drugs required for manufacture of salts & esters of drugs & medicines specified in list 3 of Notification



21/2002-Cus., dated 1-3-2002, are eligible for benefit under Sl. 80(B) of the said notification, or not.

2. The matter has been examined. It is hereby clarified that the terms drugs and medicines, referred to in Sl. 80(A) of Notification No. 21/2002-Cus. include their salts & esters as well. Therefore, the Notification No. 21/2002-Cus., Sl. 80(A), covers not only drugs or medicines specified in list 3 but also their salts & esters. Accordingly the said notification under Sl. 80(B) would also cover bulk drugs used in manufacture of the salts and esters of drugs and medicines specified in list 3.

3. This may be brought to notice of all concerned.

4. Please acknowledge receipt of this circular.

5. Hindi version will follow.

Government observes that the above circular has clarified that the Notification No. 21/2002-Cus would cover bulk drugs used in the manufacture of salts and esters of drugs and medicines specified in list 3 of the said Notification. Hence, the exemption to Bulk Drugs at Sr. No. 47 B of Notification No. 4/2006-CE dated 01.03.2006 is subject to the condition that where the use of such bulk drugs is elsewhere in the factory of production the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed. In the present case of the applicant it is not a matter of dispute that they were not a composite unit into manufacture of drugs, medicines etc. as well as bulk drugs used in manufacture of such drugs and medicines.

10. Government observes that the applicant have contended that 'Bulk Drugs' are nothing but 'Active Pharmaceutical Ingredients' required for manufacture of Dosage forms or formulations of medicines or drugs, whereas 'Drugs' or 'Medicines' are dosage forms or formulations manufactured from 'Bulk Drugs'. 'Bulk Drugs' cannot be administered directly in patients, whereas 'Drugs' or 'Medicines' are for direct use of human beings. 'Bulk Drugs' are



industrial raw materials of Dosage/formulation manufacturers and hence are not finished goods in real sense, whereas 'Drugs' or 'Medicines' are finished goods for direct administration in patients. Thus, the applicant has contended that the impugned products are not drugs or medicines but "Bulk Drugs" which are further used for the manufacture of drugs or medicines. The same being "Bulk Drugs" falls under category (B) wherein there was no absolute exemption but a conditional exemption. The condition prescribes that the same should be cleared under procedure laid down in the Central Excise Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. This implied that the "Bulk Drugs' are excisable goods which should be cleared on payment of duty and exemption is available subject to fulfillment of condition prescribed. Thus the exemption was optional subject to fulfillment of certain conditions and obligations and not an absolute and unconditional exemption.

11. Government further observes that the applicant's aforesaid arguments are supported with documentary evidences upholding the fact that the said products conformed to the standards of pharmacopeia as could be seen from the Drug License dtd. 02.02.2010 issued by the Department of Food and Drugs Administration (FDA) showing that the applicant were licensed for manufacture of Bulk Drugs and not Drugs and Medicines covered under Clause (A) of Sr. No. 47 of the Notification No. 4/2006-CE dated 01.03.2006 and the FDA has also considered the impugned product as 'Bulk Drug' products.

12. Government also observes from the brochure produced by the applicant that they are into manufacture of Bulk Drugs (Active Pharmaceutical Ingredients) and not drugs or medicines which can be directly consumed by the patients. Hence, there can be no doubt that the goods manufactured by the applicant were bulk drugs which were exempted from Central Excise duty only on fulfillment of the condition specified in the Notification No. 4/2006-CE dated 01.03.2006. Consequently, the provisions of Section 5A (1A) of Central



Excise Act, 1994 would not find application and the applicant were free to clear the goods on payment of duty for export.

~~13. The Government also find that when it is established beyond doubt that~~ the goods manufactured and cleared by the applicant are Bulk Drugs, the compliance of condition that where the use of such bulk drugs is elsewhere in the factory of production the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed, is not feasible for the reason that the purchasers of such Bulk Drugs being located outside India cannot, even if willing, follow the said procedure, being not subject to the Central Excise provisions prevailing in India.

14. Government also finds that the CESTAT in applicant's own case vide Order No. S/42/14/EB/C-II dated 06.01.2014 has unconditionally stayed the Order in Original No. 20/NG/CY/TH-II/2013 dated 30.07.2013 passed by Commissioner of Central Excise, Thane-II confirming demand of Cenvat Credit availed on inputs used in manufacture of the impugned goods which were cleared on payment of duty for export, on the ground that the goods were unconditionally exempted.

15. The Government also finds that the Commissioner (Appeals), Mumbai-I vide Order-in-Appeal No. SK/150/TH-II/2016 dated 16.03.2016 allowed rebate claims of the applicant for further period in respect of export of impugned goods on the ground that the impugned goods exported by them were covered by Sr. No. 47 B of Notification No. 4/2006-CE dated 01.03.2006 and hence not unconditionally exempted and subsequently relying on the same, Additional Commissioner of Central Excise, Thane-II Commissionerate vide Order in Original No. 146/RL/ADDL/Th-II/2013 dated 31.01.2017 dropped the demand of rebate claims sanctioned in the past on the impugned goods holding that the impugned goods in respect of which rebate claims were sanctioned were



covered by Sr. No. 47 B of Notification No. 4/2006-CE dated 01.03.2006 and hence not unconditionally exempted.

16. Accordingly, Government holds that the findings reached by the learned Commissioner (Appeals) cannot be sustained as not legal and proper and hence the impugned order of Commissioner (Appeals) is liable to be set aside and impugned revision application is liable to be allowed.

17. Accordingly, the impugned order of Commissioner (Appeals) is set aside and the revision application is allowed with consequential relief.

18. So ordered.

(Signature)
27.4.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 146 /2018-CX (WZ)/ASRA/Mumbai DATED 27th April, 2018.

True Copy Attested

To,
M/s Aarti Industries Ltd,
71, Udyog Kshetra, 2nd Floor,
Mulund-Goregaon Link Road,
Mumbai - 400080

(Signature)
11/118
एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of CGST & Central Excise, Navi Mumbai, 16th Floor, Satra Plaza, Palm Beach Road, Sector-19D, Vashi, Navi Mumbai - 400705.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy/Assistant Commissioner (Rebate), GST & CX Navi Mumbai
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

