REGISTERED 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, Cuffe Parade,
Mumbai- 400 005

F.No. 195/14 /14-RA/2515 Date of Issue : 05.04.2021

ORDER NO. 165/2021-CX (WZ) /ASRA/MUMBAI DATED 31.03.2021 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Sun Pharmaceutical Industries Ltd., Mumbai.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal No. SDK/189/RGD/2013-14 dated 30.09.2013 passed by the Commissioner (Appeals) of Central Excise Mumbai-III.

ORDER

This Revision Applications is filed by M/s. Sun Pharmaceutical Industries Ltd., A.C.M.E Plaza, Andheri Kurla Road, Andheri(East), Mumbai-400 059 (hereinafter as "the Applicant") against the Order-in-Appeal No. SDK/189/RGD/2013-14 dated 30.09.2013 passed by the Commissioner (Appeals) of Central Excise Mumbai –III.

2. Brief facts of the case are that the Applicant, manufacturer exporter have two units - One Export Oriented Unit(EOU) and another Domestic (DTA) Unit and they are adjacent units. DTA unit procured raw materials and sent it for job work to EOU for manufacturing the goods. The Applicant had filed rebate claim dated 19.08.2011 for Rs.46,962/-(Rupees Forty Six Thousand Nine Hundred and Sixty Two only) respectively under Rule 18 of the said Rules read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 for the duty paid on goods exported and the goods were cleared by the Applicant's Export Oriented Unit (EOU). The said rebate claim was sanctioned vide R.O. No. 689/11-12 dated 18.10.2011. During Post audit of the claim by the Post Audit Section of Mumbai-III Commissionerate, it was revealed from the ARE-1 No. 193 and Invoice No. 193 both dated 06.01.2011 that the Applicant is a 100% EOU, A/c Panoli, DTA. Notification No. 23/2003-CE dated 31.03.2003 exempts goods manufactured by EOU from whole of duty of excise. The jurisdictional Deputy Commissioner, clarified that the goods were exported by the DTA unit directly from the job workers premises of the Applicant's EOU unit on payment of duty under claim of rebate in account of DTA unit and that the DTA unit has paid duty from their book of account and stated that the Applicant had correctly filed ARE-1 No. 193 dated 06.01.2011. Since the sanction of the said claim vide R.O. No. 689/11-12 dated 18.10.2011 appeared to be erroneous, the Applicant was issued a Show Cause Notice dated 19.06.2012 demanding the amount granted erroneously vide R.O. No. 689/11-12 dated 18.10.2011 and for imposition of penalty under Rule 25 of the Central Excise Rules, 2004.

3. The adjudicating authority vide Order-in-Original No. R/VKJ/DC(RC)/M-III/12-13 dated 22.02.2013 held that the Applicant had contravened the provisions of Notification No. 23/2003-CE dated 31.03.2003 and appeared to have deliberately claimed the rebate of central excise duty inspite of being aware of their ineligibility for the same. Further, the Applicant are not entitled to the benefit of rebate of Central Excise duty paid, even accepting the fact that the duty was borned by the Applicant's DTA unit. The CBEC has clearly envisaged the incentive scheme of Drawback under which the exporter can be compensated for the duty paid by them on the inputs. Hence confirmed the demand of duty of Rs. 46,962/- granted erroneously vide R.O. No. 689/11-12 dated 18.10.2011 under Section11A of the Central Excise Act, 1944 along with interest and imposed a penalty of Rs. 46,962/- under Rule 25 of the Central Excise Rules, 2002.

4. Being aggrieved by the said order-in-original, the Applicant filed appeals Commissioner (Appeals) of Central Excise Mumbai –III. The Commissioner (Appeals) vide Order-in-Appeal No. SDK/189/RGD/2013-14 dated 30.09.2013 rejected their appeal and upheld the Order-in-Original.

5. Aggrieved, the Applicant has filed revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :-

(i) The Commissioner (Appeals) failed to interpret and understand the provisions pertaining to rebate claims and export made from the premises of job worker and seriously erred by issuing impugned Orders in appeal.

(ii) The Commissioner(Appeals) had recorded the findings without going through provisions and judicial decisions of the higher authorities and had misconstrued that EOU is the manufacturer and EOU does not

have any option to pay or not to pay Central Excise duty and therefore rebate cannot be granted in this case.

(iii) The Commissioner(Appeals) had not recorded single findings on the submissions made by the Applicant and passed the impugned Order on the grounds other than that which were raised in the Show Cause Notice and in the Order-in-Original. Hence, such non-speaking Order-in-Appeal needs to be set aside on this ground alone.

(iv) The Applicant submitted that the following vital points ought to be have been considered by the Commissioner(Appeals):

(a) The Applicant's DTA unit had procured the raw materials required for export products.
(b) After quality control and processing they had sent those material for converting the same in finished product on job work basis so as to utilize the idle capacity of EOU.
(c) They had obtained the permission from the jurisdictional Deputy Commissioner for processing the goods on job-work under EOU.
(d) The had followed the procedure as given in Foreign Trade Policy, Central Excise Law and CBEC Circulars issued in this regard.
(e) The goods were exported under ARE-1 of DTA unit which was signed by both DTA and EOU units.
(f) DTA unit had paid the duty by debiting from their Cenvat account.

(v) It is important to note that duty had been paid by the DTA Unit and without prejudice and time being assuming that goods had been manufactured by EOU then department ought to have issued the duty demand to the EOU since goods had been exported by DTA unit on their invoices and shipping bill.

(vi) They acted in accordance with the law and did entire transaction as allowed by the law and after obtaining the permission from department. Since there was no legal restrictions on the transaction followed by the applicant, Commissioner (Appeals) has put forth the allegation of non-compliance of conditions of permission for job work given by jurisdictional Deputy Commissioner, which is procedural in nature. Some of the conditions of said permissions which are not valid as per law are required to be observed by the applicant and based on that, no substantial benefit of rebate on the goods exported by the applicant can be denied.

(vii) All the higher authorities have held that job work done by 100% EOU to utilize their idle capacity is permissible and benefits thereunder cannot be rejected merely on grounds of procedural lapse. In this they relied on the following case laws:

(a) L.T. Karle & Co. Vs CC, Trichy [2004 (172) ELT 80 (Tri.-Bang)].
(b) CC Titicorin Vs L.T. Karle & Co. [2007 (207) ELT 358 (Mad.)].

(viii) The Commissioner(Appeals) in para 7 of the impunged Order-in-Appeal had contended that "in the instant case, entire process of manufacture is done by EOU. It is only on paper that the DTA unit purchase inputs." It means that the Commissioner(Appeals) has accepted and recorded the fact that DTA unit had purchased the inputs and sent to EOU for further processing on them and for manufacture of finished goods.

(ix) Further, Commissioner (Appeals) had contended that conditions laid down in the impugned permission letter dated 26.04.2010 are to be strictly followed as they are laid down for certain purposes and to avoid fraud by availment of multiple benefits like Cenvat Credit, DEPB benefits, All Industry Rate of Drawback at the same time when the

permission specifically deny such benefits. In this regard Applicant stated that some conditions laid down in the permission letter were not in accordance with the statutory provisions and imposing such arbitrary conditions contrary to legal provisions, cannot sustain and not tenable in law.

(x) The Commissioner (Appeals) had referred the decision of the Hon'ble CESTAT, Mumbai in the matter of Vidharbha Cables v. Commissioner of C. EX., Nagpur [2012 (275) E.L.T. 588 (Tri. - Mumbai)]. This decision has been reversed by the Hon'ble Bombay High Court in the matter of Commissioner of Central Excise, Nagpur v. Central Cables Pvt. Ltd. - 2013 (287) E.L.T. 56 (Bom.). Therefore, decision referred by the Commissioner (Appeals) is not at all applicable in the present case.

(xi) Further, Commissioner (Appeals) has also referred the decision of the CESTAT, Tribunal in the matter of Mahendra Chemicals v. Commissioner (ADJ.), C. EX., Ahmedabad [2007 (208) E.L.T. 505 (Tri.-Ahmd.)]. This decision is also not applicable in present matter, as in the applicant's case DTA being principal manufacturer has rightly made duty payment and filed rebate claim for the same. There is no question of exemption and disclaiming the benefit of exemption in the present case.

(xii) As EOU is not the manufacturer of the goods and goods were to be exported by DTA unit for which no such condition of "export should be done only on the basis of bond" exists. It can avail any of the two ways for export viz. export on basis of bond or export under claim of rebate. Accordingly, goods are exported under claim of rebate which is also mentioned on A.R.E. 1 return which is countersigned by the concerned officers of the Revenue. As such, provisions of Section 5A(1A) of Central Excise Act, 1944 and precedent confirmed in case of Mahendra

Chemicals [2007 (208) E.L.T. 505 (Tri.-Ahmd)] are not applicable in the present case.

(xiii) The Commissioner(Appeals) with pre-determined mind without taking into consideration factual position, considered that EOU is the manufacturer. The Applicant had produced relevant documents from which it was clear that EOU was only job worker who had done job work after obtaining permission from the Deputy Commissioner.

(xiv) Rebate of Central Excise duties under Rule 18 of the Central Excise Rules, 2002 and Drawback of the Custom duties are both different benefits. Exporter can avail both the benefits simultaneously i.e. benefit of Rebate of Central Excise duty paid on raw materials used in the manufacture of exported goods and also avail the benefit of Drawback for Customs duties paid. In the present case, it is undisputed fact that Applicant had not availed the benefit of drawback. Hence rejection of rebate claim on the ground that Applicant can only avail the benefit of drawback is not acceptable and tenable in law. In this they relied on the case laws in IN RE: Aarti Industries Ltd [2012 (285) ELT 461 (GOI)] and IN RE : Mars International [2012 (286) ELT 146 (GOI)].

(xv) The Department need to appreciate the fact that the Board Circular No. 49/2000-Cus dated 22.05.2000 and Circular No. 31/2000-Cus dated 20.04.2000 and Job Work permission letter dated 26.04.2010 it has never been restricted to file Rebate claim under Rule 18 of the Central Excise Rules, 2002. In all the above mentioned Circular, there is no such condition that the Applicant cannot file rebate claim under Rule 18 of the Central Excise Rules in the case where goods are processed by the EOU and exported directly from the place of EOU. Adjudicating Authority has find out new condition to reject the rebate

claim, which is not at all mentioned in all Board Circular and in the Job work permission letter.

(xvi) The whole object behind these all schemes introduced by the Government from time to time is to encourage the exporter. It is in accordance WTO agreement that taxes cannot be exported in other country. All that has to be seen that whether duty was paid on exports and such goods on which duty has been paid are exported or not. Therefore, rejection of rebate claim on such baseless ground in not acceptable and not tenable in law.

(xvii) The Applicant had filed present rebate claim under Rule 18 of the Central Excise Rules after fulfilling all the conditions mentioned therein. As mentioned in the Rule 18, Applicant had satisfied all the conditions mentioned in the Circulars and Job Work permission letter and thereafter, only they had applied for the rebate claim of duty paid on finished goods, which are cleared for export. Therefore, rebate sanctioning authority has rightly and lawfully sanctioned the rebate claim. Failure to appreciate the same, Order-In-Original passed on such baseless reason is not sustainable and Order-In-Appeal upholding such Order-In-Original needs to the set aside on this ground alone.

(xviii) In the present case, DTA unit had paid the duty on the goods exported and it was reflected in the Cenvat Credit Register of DTA and also reported in ER-1. The Applicant had also furnished copies of ARE-1 as proof of export where there is remark "*Goods cleared under claim of rebate*" was clearly mentioned and it was also certified by the Superintendent of Central Excise.

(xix) DTA unit of the Applicant is the original manufacturer and EOU is the job worker. As per condition stipulated in the permission letter dated 26.04.2010 issued by the Deputy Commissioner, Ankleshwar, finished

goods had been exported from the premises of the EOU i.e. job worker, but duty had been paid by the DTA unit and thereafter DTA unit had filed the disputed rebate claim.

(xx) The DTA of the Applicant in accordance with the permission granted by the Deputy Commissioner had sent raw materials / processed materials to the job worker i.e. EOU for further processing and converting the same into the finished goods vide respective job work challans. Thereafter, according to the Para 6.14 (b)(i) of FTP, EOU unit of the Applicant had directly exported the finished goods from their premises. It can be checked from the ARE-1 issued by the EOU.

(xxi) It is undisputed fact that such goods so manufactured and cleared for exports against ARE-1 from the place of EOU i.e. Job worker had been recorded in Daily Stock Account maintained by DTA unit in accordance with Rule 10 of Central Excise Rules, 2002.

(xxii) Export had been made from the job workers place, in accordance with Rule 16A and Rule 16B of the Central Excise Rules, 2002, where permission of finished goods to be removed on payment of duty or without payment of duty for exports from other registered premises is allowed as it was permitted by Deputy Commissioner of Central Excise. In other words, exports have been made from Job workers place on payment of duty in accordance with Rule 16B of Central Excise Rules, 2002.

(xxiii) The basic Excise document prescribed for the purpose of exports under the claim of rebate or without payment of duty is ARE-1 and same had been jointly signed by the DTA(original manufacturer) and EOU job worker from whose premises export had taken place as stipulated in the permission letter. Duty had been paid and reflected in Cenvat Credit register and also appearing on ARE-1 and same had been reflected in monthly return i.e ER-I of DTA Unit of the Applicant.

(xxiv) The Applicant had fulfilled all the conditions as mentioned in the permission letter and in the Board Circular. They had not contravened any rules and legal provisions of the law. Therefore, rebate of Rs. 46,962/- under Rule 18 of the Central Excise Rules 2002 was rightly sanctioned to the Applicant.

(xxv) The Superintendent, Central Excise and Customs, Ankleshwar had issued letter F.No. R-II/D-III/Verification/Sun/11-12/1131 dated 31.10.2011 addressed to the Superintendent(Rebate), Raigad regarding verification of genuineness of duty paying documents in the matter of present rebate claim wherein he had stated that their office has verified the records of the Applicant who has debited the duty amount of Rs.46,962/-, and found it in order. The ARE-1 under the claim of rebate also had been signed and certified by Excise Officers, deputed for physical supervision. Therefore, the disputed rebate claim was rightly sanctioned by the Authority.

(xxvi) The goods are manufactured by DTA unit of the Applicant with the help of job worker and therefore job worker cannot be the manufacturer only on the basis that export had taken place from job workers premises which is EOU.

(xxvii) The Commissioner(Appeals) alleged that Applicant had submitted that the export has been made from the job workers place in accordance with Rule 16A and Rule 16B of CER, 2002. However, they had not produced any permission granted by the Commissioner in this regard. In this regard Applicant submitted once the job work permission was obtained by EOU i.e. job worker vide the Deputy Commissioner's letter dated 26.04.2010, there is no further requirement of permission from the Commissioner under above Rules supra or under any other law.

(xxviii) The Commissioner(Appeals) had imposed penalty under Rule 25 of Central Excise Rules, 2002 on the ground that the Applicant had

contravened the provisions of Notification No. 23/2003-CE dated 31.03.2003. The Applicant submitted that in the present matter DTA unit is the Principle Manufacturer and EOU had done job work on behalf of the DTA unit hence Notification No. 23/2003-CE dated 31.03.2003 is not at all applicable in this case therefore, there is no question of contravention of the provisions of the said Notification No. 23/2003-CE dated 31.03.2003.

(xxix) The Commissioner(Appeals) had not mentioned specifically which condition of the Rule 25 ibid had been contravened by the Applicant. The Applicant had filed the rebate claim under Rule 18 of the Central Excise after fulfilment of all conditions mentioned under Central Excise Rule, 2002 and conditions mentioned in the permission letter dated 26.04.2010. Therefore. there is no any question of contravention of any conditions by the Applicant. Hence, penalty under Rule 25 ibid is not tenable and interest on the demand is also not sustainable.

(xxx) The Applicant prayed that the Order-in-Appeal be set aside.

6. Personal hearing in this case was fixed on 10.04.2018, 07.05.2015, 16.10.2019. The Applicant vide their letter dated 10.10.2019 informed that their case is identical to Revision Application F.No. 195/533/2013-RA against Order-in-Appeal No. BC/497/RGD/(R)/2012-13 dated 31.12.2012/16/01.2013 for which personal hearing was attended on 27.08.2019 representing their case based on submission made in the Revision Application supported with various judicial pronouncement and request to consider the above case in line with decision notified by the Revisionary Authority in the case of F.No. 195/533/2013-RA. Since, there was a change in the Revision Authority, hence a fresh personal hearing was fixed for 10.02.2021 and 24.02.2021. The Applicant vide their letter dated 05.02.2021 submitted that their Revision Application F.No. 195/533/2013-RA has been allowed vide GOI Order No. 130/2019-CX(WZ)/ASRA/Mumbai dated

15.10.2019. Since both the cases are identical and one of the case has already been allowed in their favour by the Revisionary Authority, the Applicant requested to co-relate both the case together and necessary comments may please be recorded in lieu of personal hearing and they prayed that their appeal may be granted with consequential relief.

7. Government has carefully gone through the relevant case records/available in case files, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

8. On perusal of the records, Government observes that M/s. Sun Pharmaceutical Industries Ltd. has two adjacent units, one working as 100% Exported-Oriented Unit (EOU) and other as DTA Unit. DTA unit procured raw materials and sent for job work to EOU. EOU obtained permission to do the job work. Permission has been given to EOU unit subject to certain conditions amongst others that the finished goods have to be exported from EOU unit and cannot be taken back to DTA unit, etc. The Applicant have exported goods from the EOU but duty was paid by the DTA unit. Later on, rebate was claimed for the duty paid on the goods exported. The said rebate claim was sanctioned vide R.O. No. 689/11-12 dated 18.10.2011. The Post Audit Section of Mumbai-III Commissionerate, raised objection on the ground that the Applicant is a 100% EOU, A/c Panoli, DTA. Notification No. 23/2003-CE dated 31.03.2003 exempts goods manufactured by EOU from whole of duty of excise. Hence the sanction of the said claim vide R.O. No. 689/11-12 dated 18.10.2011 appeared to be erroneous and the Applicant was issued a Show Cause Notice dated 19.06.2012 demanding the amount granted erroneously and for imposition of penalty under Rule 25 of the Central Excise Rules, 2004. The adjudicating authority vide Order-in-Original No. R/VKJ/DC(RC)/M-III/12-13 dated 22.02.2013 confirmed the demand of duty of Rs. 46,962/- along with interest and imposed a penalty of Rs. 46,962/- under Rule 25 of the Central Excise Rules, 2002.

9. Government observes that the job work permission was given by jurisdictional Deputy Commissioner of Central Excise letter dated 26.04.2010 –

> *"Sub : Application for Jobwork from DTA to EOU unit, from M/s Sun Pharmaceuticals Ltd. –reg.*
>
> *Please refer to your letter dated 19/3/2010 on the above subject matter.*
>
> *You are here by eligible for granted permission to do jobwork on behalf of DTA on behalf of M/s Sun Pharmaceuticals Ltd, Plot No. 25, GIDC, Panoli for Pentoxyfyline (Quantity 237) under Notification 49/2000-Cus dated 22/5/2000 under the following conditions:-*
>
> 1. *The DTA unit shall be eligible for grant of drawback against duty suffered on their inputs which are processed by EOU unit for the manufacture of goods, which are exported. The DTA exporter is eligible for payment of Brand Rate of drawback against duty suffered on inputs, on submission of proof of duty.*
>
> 2. *No CENVAT credit shall be allowed to the DTA unit on the duty paid on inputs procured for DTA to job work manufacturing.*
>
> 3. *The finished goods has to be exported from the EOU itself and cannot be allowed to be taken back to the DTA Unit.*
>
> 4. *The export is not to be counted under the parameters of EOU schemes and no benefit would accrue to the EOU.*
>
> 5. *Shipping Bill to be filed in the name of DTA unit and the name of the EOU unit will also be mentioned on Shipping Bill as a job worker. Both units name and address to be mentioned on ARE-1 & invoice. ARE-1 shall be signed by both the parties.*
>
> 6. *No DEPB benefit shall be admissible either to EOU unit or to the DTA unit for such exports. Such exporters will not be allowed to claim all industry rate of drawback."*

10. Government observes that the Applicant in the Revision Application have submitted that some conditions laid down in the permission letter were not in accordance with the statutory provisions and imposing such arbitrary

conditions contrary to legal provisions, cannot sustain and not tenable in law. Government finds that the Applicant supplied the goods to EOU for job work, subject to condition imposed vide permission letter dated 26.04.2010. As per the permission, the Applicant can not avail Cenvat credit on the goods sent to EOU for job work. They not only availed Cenvat on such goods but utilised the same while paying duty through Cenvat account. The Applicant cannot selectively choose or reject the provisions in their favour. The Applicant cannot avail of the multiple benefits like Cenvat Credit, DEPB benefits, All Industry Rate of Drawback at the same time when the permission specifically denies such benefits. Further, Government is in agreement with the findings of the Commissioner(Appeals) that the permission had been granted under CBEC Circular No. 49/2000-CUS dated 22.05.2000 wherein para 10 & 11 specifically states about the entitlement to brand rate of duty drawback to the DTA units for the job work undertaken by EOUs. Moreover, the Applicant has not produced any evidence to show that they contested the said permission. Under the circumstances the Applicant are bound to follow all the conditions mentioned therein.

11. Government notes that the said permission had been granted under CBEC Circular No. 49/2000-Cus dated 22.05.2000, wherein para 10 & 11 specifically states about the entitlement to brand rate of duty drawback to the DTA unit for the job work undertaken by EOUs –

"Sub-contracting on behalf of DTA units

10. Under para 9.17 (d0, the EOU/EPZ units in specific sectors were allowed to undertake job work for export on behalf of DTA units. This paragraph has been amended to extend this facility to all sectors. It has also been provided that DTA units shall be entitled to brand rate of duty drawback.

11. The EOU/EPZ units in textiles, ready made garments and granite sectors were allowed to undertake job work on behalf of DTA units by Board's Circular

69/98-Cus, dated 14th September 1998. This facility was subsequently extended to the EOU/EPZ units in aquaculture, animal husbandry, hardware, software sector vide Board's Circular No. 74/99-Cus, dated 5th Nov. 1999. Now, it has been decided to extend this facility to EOU/EPZ units in all sectors. Further, it has been decided that the DTA units shall be entitled to avail of the brand rate of duty drawback for such jobwork undertaken by EOUs/EPZ units concerned. Board's Circular 67/98-Cus, dated 14.9.1998 and 74/99-Cus, dated 5.11.99 stand modified to the above extent."

Government further notes that the CBEC Circular No. 31/2000-CUS dated 20.04.2000 states –

"Subject: Drawback — fixation of brand rate for inputs sent to EOUs/EPZ Units for mfg. Export goods on behalf of DTA units

It was provided in Board's Circular No. 67/68-Cus. Dated 14.9.98 issued vide F. No. 305/147/93-FTT that DTA units may utilise the idle capacity of EOU/EPZ units in certain sectors for manufacturing export goods.

2. In such cases, the inputs which are supplied by DTA Units for processing by EOU/EPZ Units are procured by DTA units on payment of applicable duties. Various Trade Associations and the Ministry of Commerce have brought out that the incidence of such duty on inputs consumed in the manufacture of the export goods can be rebated only through the brand Rate Drawback route.

3. The issue has been examined in the Board. It has been decided that in view of the above mentioned facts, the DTA units shall be eligible for grant of drawback against duties suffered o their inputs which are processed by EOU/EPZ units for the manufacture of goods which are exported in accordance with the said Circular No. 67/98.

4. Such DTA Exporters will be eligible for payment of Brand Rate of Drawback against duties suffered on inputs, on submission of proof of payment of duty. Accordingly, drawback will be payable to such exporters under Rule 6(1) of the Customs and Central Excise Duties Drawback Rules, 1995 at the rate fixed on specific application. The procedure laid down under the said Drawback Rules will

have to be followed for fixation of Brand Rates of Drawback. Such exporters will have to apply to the Directorate of Drawback for fixation of Brand rates on exports under DEPB. However, under no circumstances, such exporters will be allowed to claim All-Industry Rate of Drawback."

12. Government observes that the Applicant has submitted that *"....Department need to appreciate the fact that the Board Circular No. 49/2000-Cus dated 22.05.2000 and Circular No. 31/2000-Cus dated 20.04.2000 and Job Work permission letter dated 26.04.2010 it has never been restricted to file Rebate claim under Rule 18 of the Central Excise Rules, 2002. In all the above mentioned Circular, there is no such condition that the Applicant cannot file rebate claim under Rule 18 of the Central Excise Rules in the case where goods are processed by the EOU and exported directly from the place of EOU."*

Government finds that the above two Circulars are very clear in according the due benefit/incentives to the DTA units who get their goods manufactured from EOU on job work basis, only by way of 'drawback' against the duties suffered in inputs and not by way of any other schemes. Hence the Applicant is not eligible to the rebate of the Central Excise duty paid which was paid through their Cenvat account.

13. Government also relies on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks & Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances it was held that *"since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid there from"* and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

14. In view of foregoing discussion, Government finds no infirmity in impugned Order-in-Appeal No. SDK/189/RGD/2013-14 dated 30.09.2013

passed by the Commissioner (Appeals) of Central Excise Mumbai –III and hence upholds the same.

15. Revision Application is thus rejected being devoid of merit.

31/3/21

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India.

ORDER No. 165 /2021-CX (WZ)/ASRA/Mumbai Dated 31.03.2021

To,

M/s Sun Pharmaceuticals Ltd.,
ACME Plaza, Andheri Kurla Road,
Andheri (East), Mumbai 400 059.

Copy to:

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.