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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. 195/421/13-RA & /1059
F.NO. 195/36/15-RA

Date of Issue: 05.02.2018

ORDER NO. 17-18/2018 /ASRA/Mumbai DATED 31.01.2018 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Koprani Ltd., Village-Savroli, Taluka-Khanpur,
District-Raigad.-410203

Respondent: Commissioner, CGST & Central Excise, Raigad.

Subject: Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. US/85/RGD/2012 dated 27.11.2012 & No. CD/73/RGD/2014 dated 25.11.2014 passed by the Commissioner of Central Excise (Appeals-II), Mumbai,



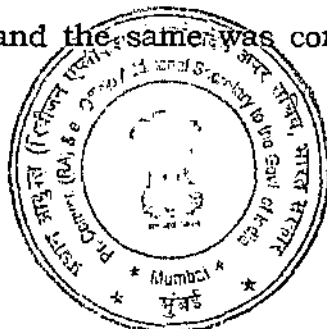
ORDER

These revision applications have been filed by M/s. Koprani Ltd., Village-Savroli, Taluka-Khanpur, and District-Raigad (herein after referred as 'Applicant') against the Orders-in-Appeal No. US/85/RGD/2012 dated 27.11.2012 & No. CD/73/RGD/2014 dated 25.11.2014 respectively, passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The brief facts of the case are that vide Order-in-Appeal No. US/851/RGD/2011 dated 27.11.2012 Commissioner (Appeals-II) Mumbai, allowed the Appeal filed by the Revenue against the Order-in-Original No. 2511/11-12/DC (Rebate)/Raigad dt 26.03.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad, on the ground that goods exported under ARE-1 No. 32/09-10 dated 14.05.09 (Rebate claim no.19485) were free samples of no commercial value and no remittance was expected and hence the sanction of rebate of Rs. 3,684.00 was not proper.

3. Being aggrieved with the above Order-in-Appeal, the applicant has filed Revision Application (RA No. 195/421/13) under Section 35EE of Central Excise Act, 1944 before the Government.

4. Aforesaid Order-in-Original No. 2511/11-12/DC (Rebate)/Raigad dt 26.03.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad was reviewed by Commissioner, Central Excise, Raigad as the rebate claim no. 19485 dt 24.11.09 was related to ARE-1 no.32 dated 14.05.09 under which free samples of no commercial value were exported and where no remittance was expected and hence the sanction of rebate was found to be not correct. In view of this a show cause cum demand notice bearing F.No. V/15-16/Reb/Koprani/Appeal/RGD/2012-13 dated 16.10.2012 was issued to the applicant for the recovery of erroneously sanctioned rebate amount of Rs.3684/- and the same was confirmed vide Order-in-Original



No. Raigad/ADC/98(DL)/13-14 dated 27.11.2013 passed by Additional Commissioner of Central Excise, Raigad. Being aggrieved by the said Order in Original, the applicant filed appeal before Commissioner of Central Excise (Appeals), Mumbai Zone-II, who vide Order-in-Appeal No. CD/73/RGD/2014 dated 25.11.2014, upheld the same.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed the Revision Application (195/36/15) under Section 35EE of Central Excise Act, 1944 before the Government.

6. The main grounds of applications in both the applications are that :

6.1 The order passed by the commissioner (Appeals) are ex-facie illegal, erroneous and unsustainable;

6.2 Fundamental requirement for rebate is manufacture and export -procedural infractions to be condoned if exports had taken place - settled law that substantive benefit not deniable for procedural lapses;

6.3 The Commissioner (Appeals) failed to appreciate that merely because the goods exported were in the nature of free samples not having any commercial values, the same were very much excisable goods cleared on payment of appropriate duty and accordingly, the Applicant;

6.4 There was no requirement under Rule 18 of the Central Excise Rules, 2002 and/ or the Notification No. 19/ 2004-C.E. (N.T.) dated 6.9.2004 issued by the central government which inter alia sets out the procedure/limitations subject to be fulfilled in order to become eligible for rebate, that in respect of the goods which are exported, the remittance has to be received/realized.;

6.5 The fundamental requirement for rebate is manufacture and export and as long as this fundamental requirement is met, the rebate claim of the Applicant cannot be rejected. In the circumstances, the Commissioner (Appeals) erred in allowing the appeal of the revenue and setting aside the OIO) to the extent of Rs. 3,684/-. Furthermore,



it is pertinent to note that the factum of payment of duty on the goods exported is not disputed.

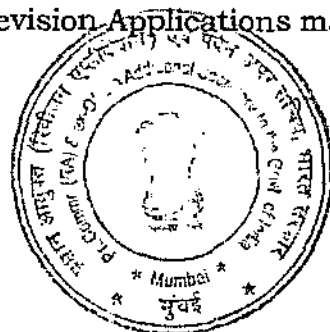
6.6 Matter was subjudice before the Revisional Authority and hence the action of the respondents in confirming the proposals in the SCN during the pendency of the revision proceedings is completely misconceived and bad in law.

6.7 The respondent failed to take into consideration the decision of the Larger bench of the Tribunal in Blue Cross Laboratories Ltd. V CCE, 2006 (202) ELT 182 (T-LB) and Cadila Pharmaceuticals V CCE, 2008(232) ELT 245 (T-LB) wherein the Tribunal has held that as regards the free samples of the medicines, the same is not different from other goods that are sold except for the difference in quantity or packing and the same have to be valued under Section 4A of the Central Excise Act, 1944.

7. The issue involved in both set of these Revision Applications being common, they are taken up together and are disposed of vide this common order.

8. The applicant also filed Application for Condonation of delay in respect of RA No.195/421/13-RA where a delay of two days occurred, stating therein that the application filed by them is well within the time limit, however, on account of postal delay, the application was received by the Government after 2 days of the expiry date/time limit.

9. A personal hearing was held in this case on 31.01.2018 Shri Karan Sarawagi, Advocate (TLC Legal) appeared for hearing on behalf of the Applicant and requested for Condonation of Delay for 2 days in respect of Revisionary Application No. 195/424/13-RA and reiterated the submission filed with Revisionary Authority and pleaded that the Order-in-Appeal be set aside and the Revision Applications may be allowed.



10. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

11. Government first proceeds to take up the application for Condonation of delay (COD) in filing the revision application by the applicant. After hearing the COD application in detail, Government has observed that due to postal delay, the delay of 2 days occurred and in the interest of justice Government condones the said delay of 2 days and proceeds to examine the case on merits.

12. Government notes that the only point in dispute is whether in absence of realization of foreign exchange the applicant is entitled for rebate claim or otherwise. Government notes that there is no dispute that free samples were not sold / exported. So also, Central Excise duty was paid on such clearances.

13. Government in this case relies on GOI Order Nos. 933-1124/2012-CX., dated 31-8-2012 reported in 2013 (288) E.L.T. 133 (G.O.I.) in the case of M/s Cadila Healthcare Ltd. wherein Government at para 11 of its order held as under:-

11. *Applicant has contended that rebate of duty paid cannot be denied on the goods supplied free as samples. The free sample has no commercial value as they are supplied free to the buyer and no foreign remittance is received. As per Condition 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 if the market price of the excisable goods at the time of exportation is less than amount of rebate claimed, the rebate will not be admissible since the goods are supplied free and therefore rebate on such goods is rightly denied under Rule 18 of Central Excise Rules, read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004. However, the amount paid as duty has to allowed in re-credited to the Cenvat credit account as the said amount cannot be retained by Government without any authority of law.*

14. Government also places its reliance on GOI Order No. 332/2014-CX, dated 25-9-2014 in Umedica Laboratories Pvt. Ltd. reported in 2015 (320)



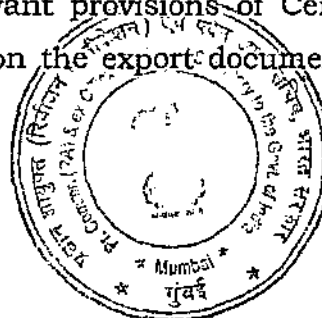
E.L.T. 657 (G.O.I.) in which on the identical issue Government observed as under.

9.1 *Government finds that the original authority also rejected the rebate claim of duty paid on free samples. Government observes that these samples were not meant for sale, so, they did not have any commercial value and no foreign remittances were to be received by the applicant. Government observes that the rebate/drawback etc. are export oriented schemes to neutralize the effect of the domestic duties on the exported goods to make them competitive in international market to earn more foreign exchange for the country.*

9.2 *As in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per records become nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of Condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.*

15. Government also observes that Hon'ble Supreme Court has also held in the case of M/s. Belapur Sugar and Allied Industries Ltd. v. CCE - 1999 (108) E.L.T. 9 (S.C.) that even if duty paid under ignorance of law or otherwise, the rebate cannot be refused since party has paid the duty. Further, Hon'ble Apex Court has held that if the duty paid shown to be not leviable or entitled for rebate, the Revenue has to refund, adjust, credit such amount to the assessee as the case may be.

16. Government by applying the ratio of aforesaid judgements to the instant applications holds that as in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per



records becomes nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

17. Government further holds that the amount of duty paid on free samples cannot be retained by Government and it has to be returned to applicant in the manner in which it was paid. Accordingly, such duty is required to be returned to the applicants. As such the amount of duty paid on free samples i.e Rs.3,684/ (Rupees Three Thousand Six Hundred and Eighty Four only) may be reccredited in the applicant's Cenvat credit account.

18. In view of above, Government modifies the order of Commissioner (Appeals) to the extent discussed above.

19. Revision Applications are disposed off in above terms.

20. So, ordered.

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

True Copy Attested

To,
M/s. Kopran Ltd.,
Village-Savroli, Taluka-Khanpur,
Raigad.-410203, Maharashtra.

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11.1.18
एस. आर. हिरुलकर
S. R. HIRULKAR
(AC)

ORDER No. 17-18/2018-CX (WZ) /ASRA/Mumbai DATED 31.01.2018

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

