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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. 195/205/14-RA /2621 Date of Issue: 09.04.2021

ORDER NO. 171 /2021-CX (WZ) /ASRA/Mumbai DATED 30.3.2021 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 Pharmaceuticals Industries Ltd.
ACME Plaza, Andheri-Kurla Road,
Andheri (E)- Mumbai – 400 059.

Respondent : Commissioner of Central Excise, Mumbai I.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. PD/43/M-I/2014 dated 28.02.2014 passed by the Commissioner, (Appeals)-I, Central Excise, Mumbai-Zone-I.

ORDER

This Revision Application has been filed by M/s Sun Pharmaceuticals Industries Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PD/43/M-I/2014 dated 28.02.2014 passed by the Commissioner, (Appeals)-I, Central Excise, Mumbai-Zone-I.

2. Brief facts of the case are that they were engaged in manufacturing and export of various types of products falling under Chapter 29 & 30 of the Central Excise Tariff Act, The exporter had filed the claim on 19.07.2013. After verification of the claim documents, it was observed that the claim was not proper and complete in as much as in the shipping bills the factory sealing address was 100% EOU, Plot No-329 & 241, Halol Baroda Highway, Halol Dist. Panchmaha, Gujarat having Reg No AADCS3124KFTOO1 whereas ARE 1' s and Central Excise Invoices pertaining to the above claims mentioned that the goods are cleared without sealing and supervision from the domestic factory situated at near Anand Kendra, Halol Baroda Highway, Halol- 389350, having different Reg. No AADCS3124KXMOOI.

3. A show Cause Notice was issued to the applicant alleging therein that why their rebate claim of Rs. 5,96,475/- should not be rejected, as it appeared that the exported goods are not co-related with the goods cleared from the domestic factory as mentioned in the invoices and AREI's , under the provisions of Rule 18 of Central Excise Rules 2002 read with Notification No- 19/2004-CE(NT) dtd. 06.09.2004 as amended. The aforesaid show cause notice was adjudicated by the then Deputy Commissioner (Rebate) of Central Excise, Mumbai-I under Order-in-Original No. KII/798-R/2013(MTC) dated 17.10.2013, wherein the rebate claim of Rs.5,96,475/- was rejected.

4. Being aggrieved by the Order in Original, the applicant filed appeal before Commissioner (Appeals) who vide Order in Appeal No. PD/43/M-I/2014 dated 28.02.2014 (impugned Order) upheld the Order in Original and rejected the appeal filed by the applicant.

5 Being aggrieved with the impugned Order, the applicant has filed present revision application mainly on the following grounds :-

5.1 The Commissioner (Appeals) has failed to interpret and understand the provisions pertaining to rebate claims and export made from the premises of DTA Unit and seriously erred by issuing impugned Order-In-Appeal to reject the rebate claim filed by the Applicant.

5.2 The Commissioner (Appeals) has neither considered any documents submitted by them nor recorded any findings on the same. In their appeal memo they submitted that Adjudicating Authority has granted only one chance of hearing and passed the Order-In-Original ex-parte, without granting sufficient chance of hearing and without following principles of natural justice. Commissioner (Appeals) has also not recorded any findings on the issue of passing of Order-In-Original without granting natural justice. Therefore, Commissioner (Appeals) Order is non speaking Order and hence it needs to be set aside on this ground alone.

5.3 They could not submit Defence Reply to the Show Cause Notice because Department did not give sufficient time to prepare and submit the Reply. Further, Deputy Commissioner has granted only one chance of hearing. Hon'ble CESTAT, Ahmedabad in the matter of M/s Vindhyavasini Corporation Pvt Ltd Vs CCE & ST ; 2013-T1OL-1802-CESTAT-AHM held that natural justice cannot be violated before arriving at a conclusion. Least the adjudicating authority should have done is by giving at least three different hearings to them and thereafter taken the SCN for disposal. There seems to be a tearing hurry on the part of the adjudicating authority to decide the issue even without waiting for reply from the main applicant as well as from the other applicants. This is a gross violation of principles of natural justice.

5.7 On the issue of natural justice they rely on the following case laws:-

Uma Nath Pandey, reported in 2009 (237) ELT 241 (SC)

Kanugo Tubes (I) Ltd. Versus Commissioner Of C. Ex. & Cus., Vadodara;

Surya Fine Chemicals Versus Commr. Of C. Ex., Chennai-III; 2003 (159) E.L.T. 487 (Tri. Chennai)

Afloat Textiles (P) Ltd. Versus Commissioner Of C. Ex., Vapi; 2007 (215) E.L.T. 198 (Tit Ahmd.)

Intech Versus Commissioner Of C. Ex., Chennai-III; 2003 (152) E.L.T. 311 (Tri. - Chennai)

As explained above, the OIO was passed without giving sufficient time to prepare defence reply and granting sufficient chance of personal hearing. Further this fact was submitted before Ld. Commissioner(Appeals), but he has neither considered the same nor recorded any findings on the same and passed impugned O.I.A.. Hence such non speaking order needs to be set aside on this ground alone.

5.8 The Ld. Commissioner (Appeals) has denied the rebate claim merely saying that they have not submitted their rebate claim evidencing export of goods and payment of duty thereof in time. He has also referred and reproduced Rule 18 of the Central Excise Rules 2002 and CBEC Manual. In the impugned O.I.A. barely he has alleged that Applicant has not submitted their rebate claim properly but he has not explained or substantiated exactly what condition of the Rule 18 ibid and CBEC manual has been not satisfied by them.

5.9 While passing impugned O.I.A, Ld. Commissioner (Appeals) has not considered the documents on records. He has passed the impugned O.I.A. without considering documents available on records and without recording findings on the same. Hence, Order-in-Appeal passed blindly, needs to be set aside on this ground alone.. However, Commissioner (Appeals) has not recorded any findings on the submissions made by them hence they have reproduced all the submissions made before Ld. Commissioner(Appeals) for ready references:

5.10 The Adjudicating Authority mainly rejected rebate claim filed by them on the following two grounds:

- On the shipping bill pertaining to the disputed rebate claim, the exporter has mentioned the factory sealing address as 100% EOU at Plot No. 329 & 341, Halol Baroda Highway, Halol Dist. Punchmahal, Gujrat having registration as AADCS312403001

- Whereas in the copies of ARE1's and Central Excise Invoices pertaining to the disputed claims mention that the goods are cleared without sealing and supervision from the manufacturer- exporter's domestic factory address situated at near Anand Kendra, Halol- Baroda Highway, Halol-389350 having registration No. AADCS3124KXMO01.

5.11 As reproduced above, Ld. Deputy Commissioner has rejected the impugned rebate claim merely saying that Rebate claim does not adhere to the conditions laid down under Notification No. 19/2004-CE(N.T.) dated 06.09.2004. Before rejecting rebate claim Ld. Deputy Commissioner should have appreciated followings facts from which it is clearly evident that goods are manufactured in & cleared from DTA unit only.

- The exported goods can only be manufactured at DTA unit and the said goods cannot be manufactured at EOU. EOU is not permitted to manufacture the said goods as the said product is not mentioned in the LOP issued to the EOU by the Development Commissioner. Annexed herewith and marked as Annexure F to the copy of LOP of EOU.

- In support of contention that said goods can only be manufactured at DTA unit, They have provided the Affidavit of Mr. Manoj Kanojia, Assistant Manager, clearly stating that said exported goods are manufactured in DTA unit only. Annexed herewith and marked as Annexure G to the Affidavit.

- After manufacture of the said exported goods was entered into Daily Stock Account (DSA) of DTA & not in EOU. Annexed herewith and marked as Annexure H to the copy of DSA for the month of July 2012.

- The Excise Invoice & ARE-1 is prepared by DTA unit. Applicant states and submits that goods are cleared under and invoice raised under rule 11 of Central Excise Rules, 2002 where name, address, registration number is mentioned is of DTA unit. However ARE-1 also contents all details of DTA unit only and ARE-1 is duly attested by the Customs Officers.

- The description of goods mentioned in Shipping Bills & all other documents are the same. (copies of Invoice & ARE-1 submitted along with rebate claim)
- Further, Duty is also paid by DTA unit by debiting Cenvat Credit Account of DTA unit. (copies of cenvat credit register submitted along with rebate claim)
- Duty has been paid and reflected in CENVAT Credit register and in the monthly ER-1 Return. Annexed herewith and marked as Annexure-1 to the copy of ER-1.

From the above facts it is very clear that goods are manufactured by DTA unit and hence no rebate claim can be denied to them.

5.13 In the show cause notice it was alleged that, they may have claimed the benefit of duty free imports against export and goods covered under Shipping Bill are not co-related with goods cleared from domestic factory. It is submitted that they have not availed any benefit of duty free procurement of inputs against present exports. Nowhere, in shipping bills has been mentioned that exports is made under any scheme whereas shipping bills are filed under claim of rebate. Hence there is no valid ground for rejection of rebate on this count.

5.14 Further, EOU unit has not taken the benefit of the present export for the calculation of their Net Foreign Exchange. Their EOU unit has submitted APR and QPR wherefrom it can be checked that the benefit of this export has not been taken by the EOU unit. Annexed herewith and marked as Annexure-J to the copy of Certificate of Chartered Accountant certifying that EOU unit has not availed the benefit of disputed Shipping Bills in their NFE calculation for the said period.

5.15 Further, the description & quantity of goods mentioned in shipping bills are the same & matching with the description & quantity of goods covered under ARE-I. & Invoices. Therefore, the allegation of Department that goods are not correlated is not sustainable in law and totally wrong & invalid. Therefore rejecting the rebate claims merely saying that rebate claims does not adhere to the conditions laid down under Notification No. 19/2004-CE(N.T.) dated 06.09.2004, without perusing documents available with the department is totally wrong. Hence upholding such Order-in-Original vide impugned Order-in-Appeal needs to be set aside on this ground alone.

5.16 In view of above, as there is no dispute that goods are manufactured and cleared by DTA unit, no rebate can be denied only on clerical errors made in shipping bills and no substantial benefit of law can be denied to them on such procedural & clerical lapses.

5.17 The Ld. Commissioner(Appeals) in the impugned OIA contended that the claim shall be taken as filed only when all-relevant documents, correct documents and correct information in all aspects are available/filed. In the present case, it is observed that they did not do the same within one year from the date of export. No new evidence is brought on records by the Applicant. As Applicant have not followed the proper procedure by not submitting all relevant documents, correct

documents, correct information in all aspects in time as per the Notification No. 19/2004 dt. 06.09.2004 as amended read with Rule 18 of Central Excise Rules, 2002, the refund is liable for rejection.

5.18 It is submitted that they have complied with all the conditions of the Notification No. 19/2004, then their rebate claim cannot be denied merely on the basis of procedural lapses. Further, in the present case they have submitted all the documents required for granting of Rebate and other documents evidencing that export has been done by DTA unit hence, rebate claim cannot be denied merely on the technical lapses in the documents. They rely upon the following judicial decisions in support of their contentions.

- Commissioner Of Central Excise, Kolhapur Vs. Shah Precicast P. Ltd.; 2011 (269) E.L.T. 407 (Tri. Mumbai)
- IN RE : SANKET INDUSTRIES LTD.; 2011 (268) E.L.T. 125 (G.O.I.)
- IN RE Commissioner Of Central Excise, Bhopal, 2006 (205) E.L.T. 1093 (G.O.I.) Order No. 600/2005, Dated 29-11-2005 In F. No. 198/108/2004-RA
- IN RE COTFAB EXPORTS, 2006 (205) E.L.T. 1027 (G.O.I.),
- In Re : Non-Ferrous Materials Technology Development Centre; 1994 (71) E.L.T. 1081 (G.O.I.)

5.19 The Ld. Commissioner(Appeals) has referred decision of the Hon'ble Supreme Court Higher Authorites in the matters of UNION OF INDIA Versus KIRLOSKAR PNEUMATIC COMPANY; 1996 (84) E.L.T. 401 (S.C.) wherein held that the Customs Authorities, who are the creatures of the Customs Act cannot be directed to ignore or act contrary to Section 27 whether before or after amendment. In this matter they state and submit that in the present case there is no such case that they have not complied with any condition of the Act or Notifications. Any procedural mistake cannot be construed as non fulfillment of any provisions of law. Further another case referred in the matter of Collector Of CE.., Chandigarh Versus Doaba Co-Operative Sugar Mills; 1988 (37) E.L.T. 478 (S.C.) wherein held that but in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. In this regard they submit that while filing rebate claim they have fulfilled all the conditions of the relevant Notifications and Rules and Rebate claim was filed within period of limitation. There was no dispute on the limitation as rebate was filed within limitation period.

5.20 Further, another two case laws referred by the Ld. Commissioner(Appeals) in the matter of Malwa Cotton Spinning Mills Ltd. Vs. CCE Ludhiana;2013(2)ECS (86) (Tri.Del) and COLLECTOR OF C. EX., CALCUTTA Versus ALNOORI TOBACCO PRODUCTS; 2004 (170) E.L.T. 135 (S.C.) are also not applicable in the present case as matter involved in the present case and referred decision is different and they

fulfilled all the conditions of Notification and Central Excise Rules required for rebate.

5.21 As explained above, since exported goods has been manufactured by the DTA unit and exported under claim of rebate after following all the conditions of Notification No. 19/2004-CE(N.T.) dated 06.09.2004 therefore, rebate claim cannot be denied merely on the basis of clerical mistakes and entire rebate claim needs to be sanctioned to them along with consequential relief.

6. A Personal hearing held in this Revision Application on 18.01.2021 was attended online by Shri Rajesh Wadhwa, Dy. Manager (Export) on behalf of the applicant. He reiterated the written submission and submitted that his substantive claim should not be denied on procedural grounds and pleaded that in view of the same, the Revision Application may be allowed and Order in Appeal be set aside.

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. Government observes that the original authority rejected the rebate claims on the grounds that on the shipping bill pertaining to the disputed rebate claim, the exporter has mentioned the factory sealing address as 100% EOU at Plot No. 329 & 341, Halol, Baroda Highway, Halol Dist. Punchmahal, Gujrat having registration as AADCS312403001, whereas in the copies of ARE1's and Central Excise Invoices pertaining to the disputed claims mention that the goods are cleared without sealing and supervision from the manufacturer- exporter's domestic factory address situated at near Anand Kendra, Halol- Baroda Highway, Halol-389350 having registration No. AADCS3124KXMOO1.

9. The Government has perused the export documents available on record and the observations drawn by the Appellate Authority in the impugned order in appeal. Government also observes that the applicant has also enclosed the copies of the impugned Excise Invoices, ARE-1s, Shipping Bills, Export Invoices Packing Lists, Airway Bills etc. to the Revision Application.

10. Perusal of the said documents reveals that in the Excise Invoices raised under rule 11 of Central Excise Rules, 2002, the name, address, registration number of DTA unit of the applicant is shown. Further, ARE-1 is also showing the address of DTA unit. Hence the excise documents are clearly evidencing that the goods were manufactured and cleared for exports from the DTA unit. Further, in

the corresponding Shipping Bills, there is cross reference at ARE-1s and vice-versa. ARE-1s also find mention of relevant duty paying invoices issued by the applicant. Further, description, weight and quantities exactly tally with regard to description mentioned in respective ARE-1s and other export documents including Shipping Bill and export invoices. As such there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation. Moreover, the applicant has also enclosed a copy of Affidavit of Mr. Manoj Kanojia, Assistant Manager, clearly stating that said exported goods are manufactured in DTA unit only as well as a Certificate issued by the Chartered Accountants certifying that the impugned goods were in fact manufactured and cleared from the DTA unit of the applicant and by mistake the shipping bills were filed showing the name of EOU. The said Chartered Accountants have also certified that No benefit of EOU has been availed by the EOU unit of the applicant including benefit of NFE Calculation. Government also observes that 100% EOUs are not required to pay duty as per provisions of Section 5A(1A) of Central Excise Act, 1944 read with Notification No. 24/2003-C.E., dated 31-3-2003. As per explanation 1(A) to Section 5A of Central Excise Act, 1944, the manufacturer of such goods has no option to pay Central Excise Duty since Notification No. 24/2003-C.E. (N.T.), dated 31-3-2003 issued under Section 5A(1A) of Central Excise Act, 1944 granting unconditional exemption from whole of duty in this case. C.B.E. & C. has clarified vide letter F. No. 2009/26/2009-CX., dated 23-4-2010 that in terms of Section 5A(1A) of Central Excise Act, 1944, 100% EOU do not have option to pay duty and thereafter claim rebate of duty paid. Therefore, applicant's submissions that the goods were manufactured and cleared for export by the DTA unit has substance and merits acceptance.

11. From the observation as aforesaid, Government is of the considered opinion that showing the address of the EOU was purely a clerical error made in shipping bills which is condonable. In many a cases Government has held that the rebate/drawback and other such export promotion schemes of Government, are incentive oriented beneficial schemes intended to the goods export in order to promote export and to earn more foreign exchange for the country. In case substantive fact of export is not in doubt, a liberal interpretation is to be accorded in case of technical lapses, if any, in order not to defeat the very purpose of such schemes.

12. Commissioner (Appeals) has observed that the appellant failed to submit the original statutory documents evidencing export of goods and payment of duty thereof in time and that the appellant have not followed the proper procedure by not submitting all relevant documents, correct documents, correct information in all aspects in time as per Notification No.19/2004(NT) dtd. 06.09.2004. However, there is nothing in the Order in Original No. KII/798-R/2013(MTC) dated 17.10.2013 which shows that the original authority rejected the rebate claim by observing that the same was filed with all proper documents after stipulated period of one year in terms of Section 11B of the Central Excise Act, 1944. Moreover, Hon'ble High Court of Delhi in the case of C.C.E. Vs Arya Exports and Industries [2005(192) ELT 89] has also held that if refund claim not filed in proper form or without necessary documents, department can direct appellant to file the same in proper form along with supporting documents and the date of filing claim is the date on which claim was filed initially in form not prescribed or without documents. Government has also referred & relied on this case [2005(192) ELT 89] while deciding following cases involving similar issues.

In Re : Bajaj Electricals Ltd. [2012 (281) E.L.T. 146 (G.O.I.)];
In Re : Famy Care Ltd. [2014 (311) E.L.T. 871 (G.O.I.)].

13. In view of above discussions and findings, Government observes that the rebate claims are admissible to the applicant in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (NT)., dated 6-9-2004 subject to verification of duty paid on the exported goods by the original authority.

14. In view of above discussion, Government modifies the impugned orders and directs the original authority to conduct necessary verification as directed above, and decide the said rebate claims accordingly.

15. The Revision Application is disposed off in the above terms.

Shrawan 30/3/21

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

ORDER No. 171/2021-CX (WZ) /ASRA/Mumbai DATED 30.03.2021

To,
M/s Sun Pharmaceutical Industries Ltd.
ACME Plaza, Andheri-Kurla Road,
Andheri (East), Mumbai – 400 059.

Copy to:

1. The Commissioner of GST & CX, Mumbai East Commissionerate.
   9th Floor, Lotus Infocentre, Parel, Mumbai 400 012.
2. The Commissioner of GST & Central Excise, (Appeals-II) Mumbai, 3rd Floor, GST Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, Division-III, GST & CX, Mumbai East Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.