

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. 371/100/DBK/13-RA / 4209 Date of Issue : 12.08.2021

ORDER NO. 183 /2021-CUS (WZ)/ASRA/MUMBAI DATED 09.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Jubilant Life Sciences Limited, Bharuch. Gujarat.

Respondent : The Commissioner of Central Excise and Customs, Vadodara-II.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order in Appeal No. VAD-EXCUS-002-APP- 296-2013-14 dated 19.08.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

ORDER

This Revision Application has been filed by M/s. Jubilant Life Sciences, Limited, Unit-I, Bharuch. Gujarat, an SEZ unit (hereinafter referred to as "the applicant") against the Order in Appeal No. VAD-EXCUS-002-APP-296-2013-14, passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

2. The brief facts of the case are that the applicant had filed the Bill of Exports with the Authorised Officer for claiming benefit of duty drawback on goods being procured / purchased from Domestic Tariff Area vendors. The period of filing Bill of Exports was from 15.07.2010 to 30.09.2010. The Authorised Officer received the said Bill of Exports and thereafter the various goods covered under the said Bill of Exports were assessed and allowed entry into the SEZ under the relevant provisions of the SEZ Rules, 2006, read with the provisions of the Customs Act, 1962 and the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 as amended. The applicant thereafter filed the relevant papers required to substantiate their drawback claims vide their letters for 32 claims. Further the applicant was required to follow the provisions of the Rule 30 (3) (4) (5) (6) (7) and (8) of the SEZ Rules, 2006 as amended, for claiming drawback on supplies made by DTA vendors. As per Rule 30(8) of SEZ Rules, 2006 it was mandatory for the SEZ unit to make the payment to DTA Suppliers from the SEZ Unit's Foreign Currency Account and required to follow the guidelines issued by the RBI.

3. The Bills of Exports filed by the applicant for claiming Drawback as per Annexure-A to Order in Original No. 01/2012-13/DBK dated 21.12.2012 [except for Bill of Exports at Sr.No.6 & 8 of Annexure -A], the payment to the DTA supplier have been made from the Exchange Earners Foreign Currency (EEFC) Account No. 000706000275 held, maintained and operated by the Corporate Office with ICICI Bank Limited, Commercial Banking Group, K-1, Senior Mall, Sector-18, Noida -201 301 (U.P) and thus the payment to the DTA suppliers have not been paid from the Foreign Currency Account No. 003106000615 of the SEZ Unit opened on 23.07.2011 with ICICI Bank Limited, Commercial Banking Group, K-1, Senior Mall, Sector-18, Noida — 201 301 (U.P) but from EEFC Account No. 000706000275 held, maintained and operated by the Corporate Office. Therefore, as discussed above, there was violation of Rule 30 (8) of the SEZ Rules, 2006 in relation to the drawback claims filed by the Unit. Further for the two drawback claims mentioned at Sr. Nos. 6 & 8 of Annexure-A, the Unit failed to submit required Bank documents evidencing payment details from the Unit's Foreign Currency Account,

in relation to the supplies made by the respective DTA suppliers (as mentioned in Annexure -A).

4. In view of the above facts, the Deputy Commissioner Customs/Specified Officer Jubilant SEZ vide Order in Original No. 01/2012-13/DBK dated 21.12.2012 rejected the 32 drawback claims amounting to Rs.11,09,381.73, filed by the applicant.

5. Being aggrieved with the aforesaid Order in Original, the applicant filed appeal before Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara. As the applicant failed to file the said appeal within 60 days from the date of the communication of Order in original No. 01/2012-13/DBK dated 21.12.2012, as specified vide Section 128 of the Customs Act, 1962, Commissioner (Appeals) without going into merits of the case, rejected the appeal filed by the applicant as time barred vide Order in Appeal No. VAD-EXCUS-002-APP-296-2013-14 (impugned Order).

6. Being aggrieved by the impugned Order the applicant has filed the present Revision Application mainly on the following grounds:-

6.1. Delay in filing the appeal was due to default on the part of the department

- The Deputy Commissioner had in the covering page of his order indicated that the Appeal was to be filed before the Commissioner (Appeals), Ahmedabad. But later on when the Company was about to file the Appeal during the second week of February 2013 (i.e. well within the limitation period), the office of the Deputy Commissioner informed the Company verbally that the jurisdiction of the Appellate Authority had changed, and that they would inform the Company about the relevant Appellate authority, which would most likely be the Commissioner of Customs (Appeals), Vadodara. On coming to know of the new appellate authority, the Company immediately filed the appeal. The delay in filing the Appeal was thus totally attributable to default on the part of the department.
- It is a settled law that in case of reasons beyond the control of the Appellant the delay in filing appeal should be condoned. In this regard the following cases are referred to:

In Re: Thermax Ltd. (2013 (291) E.L.T. 142 (G.O.1.)),

In M.P. Electricity Board v. Commissioner (2010 (255) E.L.T A81 (S.C.)

6.2 The Order is beyond the scope of Rule 30(8) of the SEZ Rules.

- Rule 30(8) of the SEZ Rules reads as follows:

"30 (8) Drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier shall be admissible provided

payments for the supply are made from the Foreign Currency Account of the Unit."

A reading of the provision clearly shows that the payment has to be made from the Foreign Currency Account of the Unit, it nowhere mentions that the Foreign Currency Account has to be exclusively in use by the Unit, and payments cannot be made from the account of the same legal entity.

- The Foreign Currency Account from which the payments were made belongs to the same legal entity of which the said Unit is also a part, and was a common account for said Unit and the other locations of the legal entity.

6.3 Rule 30 (8) of the SEZ Rules is not applicable to the facts of the present case.

- Assuming without admitting that Rule 30(8) of the SEZ Rules requires that the Foreign Exchange Account should be exclusively operated by the Unit and not the Applicant, it would be a condition which is impossible to impose. This is because of the reason that they had not commenced production till 30/08/2011, it was thus not in receipt of any foreign exchange and thus did not have any foreign exchange to make payments for procurement in foreign exchange. Accordingly they had no option but to make payments from its other account located at the head office.
- This scenario would be applicable to any new SEZ Units, since the question of having foreign exchange to make payments would arise only in case of export of goods, which is possible only after commencement of production. Accordingly for procurement before commencement of production no Unit would ever have any foreign exchange to make payments for procurement and the entire purpose of the SEZ Act would be defeated.
- The Courts have consistently taken the view that procedures which are practically impossible to comply with cannot be enforced. In this regard the decision of the Hon'ble Delhi High Court in the case of Wipro Ltd. Vs. UOI, 2013-TIOL-119-HC-DEL-ST, may be relied upon. The facts of the case were that the Refund under Rule 5 of the Cenvat Credit Rules for Service tax had been denied on the basis that Condition 3 of Notification No. 12/2005 had not been complied with, namely that the description, value and the amount of service tax and cess payable on input-services actually required to be used in providing the taxable service to be exported had not been mentioned.

6.4 The non-payment of foreign exchange from the exclusive account of the Applicant would be a procedural lapse and hence directory and not substantive and hence not mandatory, and should be condoned.

- Without prejudice to the above if it is assumed that there was a requirement under Rule 30(8) of the SEZ Rules to make payment from the account of the Applicant exclusively used by the Unit of the Applicant, it would be only a procedural lapse, since the main condition as per Rule 30 (8) is that the payment should be made in foreign exchange, and not that it is made from an account exclusively used by the unit.

- The Supreme Court has laid down the law that a substantial right should not be defeated on account of procedural irregularity. In this regard the following cases are being relied upon:
United Bank of India vs. Naresh Kumar IR 1997 sc 3
General Instruments Co. Vbs. UOI, (2008) 229 ELT 642 SC
- A recent case in this regard being relied upon is that of Tablets India Limited vs CCE (2010 TIOL 652) (Chennai)), in which the Hon'ble High Court held that Rebate of duty paid on inputs cannot be denied for procedural lapses.
- They have fulfilled all the terms and conditions of the SEZ Acts and Rules and also made payments in foreign exchange from the account belonging to the same entity, even though not in exclusive use of the said Unit and accordingly, the lapse if any is only procedural and not substantive it may be condoned.

7. A personal hearing in this case was held on 16.03.2021 through video conferencing which was attended online by Shri Dharmendra Sharma, Senior Manager, on behalf of the applicant. He submitted that the Commissioner (Appeals) has rejected their appeal as time barred as he did not condone 19 days delay. He submitted that net amount of Rs.10.10 Lakh of drawback is eligible to them as payment to DTA suppliers has been made by them from their corporate foreign exchange and book adjusted to SEZ unit (applicant).

8. Government observes that the applicant in this case filed appeal after the expiry of initial period of 60 days as stipulated under Section 128 of Customs Act,1962 and the same was filed after 19 days of delay. The applicant before Commissioner (Appeals) pleaded that preamble of the Order in Original passed by the Deputy Commissioner, SEZ, specified the Appellate Authority as Commissioner of Customs(Appeals), Ahmedabad and when they were about to file the appeal, they were informed verbally that jurisdiction of the Appellate Authority had changed and the office of Dy. Commissioner informed them that new Appellate Authority was Commissioner (Appeals), Vadodara and they immediately filed appeal before him. The Commissioner (Appeals) by observing that the reasons mentioned for delay was a lame excuse as the appellant's company was run by a professionally qualified personnel having complete knowledge of Service Tax, Customs and Central Excise matters including Head of Indirect Taxation who himself attended the personal hearing and having such qualified personnel in their company it would be out of place to accept that they were not aware about the correct appellate authority.

9. Government in this case places its reliance on Hon'ble Gujarat High Court Order Special Civil Application No. 14988 of 2005, decided on 30-9-2005 [reported

as 2006(199) ELT 404(Guj.)] wherein Hon'ble Gujarat High Court observed that Appeal not to be dismissed on technical ground when petitioner is pursuing statutory remedy and not inclined to give up his right of appeal and accordingly directed the Commissioner (Appeals) to condone the delay.

10. As the grounds for seeking condonation of delay by the applicant before the Commissioner (Appeals) are reasonable and justifiable as the applicant was confused by the preamble of the Order in Original which directed to file appeal before Commissioner (Appeals), Ahmedabad, the delay in filing the appeal before the Commissioner (Appeals) is required to be condoned. Government therefore condones the delay of 19 days in filing the appeal by the applicant and sets aside Order in Appeal No. VAD-EXCUS-002-APP- 296-2013-14 dated 19.08.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara. The appeal is restored and remanded back to the Commissioner (Appeals) for decision on merits.

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

Shrawan
9/8/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India.

ORDER No. 183 /2021-CUS(WZ)/ASRA/Mumbai DATED 09.08.2021

To,

M/s. Jubilant Life Sciences Limited
(now known as Jubilant Ingraviva Limited),
Unit-I, plot No. PI-L1, Jubilant Infrastructure Limited'
SEZ, Plot No. 5, Village: Vilayat, GIDC, Tal: Vagra;
Dist: Bharuch, Gujarat-392012.

Copy to:

1. Commissioner of Goods & Service Tax, Vadodara-II Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Course Circle, Vadodara 390 007.
3. Sr.P.S. to AS (RA),Mumbai.
4. Guard file.
5. Spare Copy.