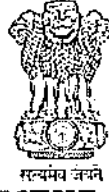


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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.195/151/17-RA

1052

Date of Issue: 29.03.2023

ORDER NO. 195 /2023-CX (WZ) /ASRA/Mumbai DATED 29.03.2023 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 Limited,
Acme Plaza, Andheri Kurla Road,
Andheri (E), Mumbai - 400 059.
- Respondent : Commissioner of CGST & Central Excise, Mumbai East,
9th floor, Lotus Info Centre, Station Road,
Parel (East), Mumbai - 400 102.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal no.
SK/109-110/M-I/2016 dated 30.12.2016 passed by the
Commissioner of Central Excise (Appeals), Mumbai - I.

ORDER

The subject Revision Application has been filed by M/s Sun Pharmaceutical Industries Limited, Mumbai (here-in-after referred to as 'the applicant') against the Order-in-Appeal 30.12.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai - I, which decided appeals filed by the applicant against two Orders-in-Original passed by the Maritime Commissioner, Central Excise, Mumbai - I, which in turn decided rebate claims filed by the applicant. The subject Revision Application is against the decision of the Commissioner (Appeals) in the case of Order-in-Original dated 01.09.2015 and hence the present proceeding is limited to the portion of the Order-in-Appeal which deals with the Order-in-Original dated 01.09.2015.

2. Brief facts of the case are that the applicant filed claims for rebate of duty paid by them in respect of goods exported by them under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE (NT) dated 19.06.2004. A Show Cause Notice was issued requiring the applicant to explain the discrepancies with respect to the quantity and value in the Airway Bill vis-à-vis the ARE -1 and also the non-submission of duty payment certificate by the Range Superintendent. The original authority while deciding the Show Cause Notice and the rebate claim found that the rebate amounting to Rs.3,20,625/- was inadmissible as the same pertained to samples which were exported by the applicant 'free of cost'. The original authority found that the FOB value of the said goods was 'Zero' in the relevant export documents and hence held that the condition 2(e) of notification no.19/2004-CX(NT), which required the market price of the exported goods to be more than the rebate claim, was not satisfied and proceeded to reject the rebate claim. The applicant preferred appeal before the Commissioner (Appeals) who upheld the decision of the original authority.

3. Aggrieved, the applicant has filed the present Revision Application against the portion of the impugned Order-in-Appeal rejecting the rebate claim on the following grounds:-

(a) That they had fulfilled all the conditions as mentioned in Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004; that there was no dispute regarding the payment of duty on the goods exported;

(b) That the term market value and commercial value were two distinct terms and that they had declared the value of the goods to be Rs.25,65,000/- in the ARE - 1 which was certified by the Customs officer; that the same was higher than the rebate claimed; that however since the same were supplied 'free of cost' the transaction value for the same was 'zero' as reflected in the Shipping Bill and hence the condition at 2(e) of the said notification was not violated; that they had arrived at the value of the exported goods in terms of Section 4 of the Central Excise Act, 1944 and hence it could not be said that the goods did not have market value;

(c) That they had paid excise duty on the said goods on the comparable market value of the goods even though the goods were supplied free to the customer and were hence eligible to the rebate claimed by them;

(d) That neither Rule 18 of the Central Excise Rules, 2002 nor the said notification lays down any condition that in respect of goods exported, the consideration should be necessarily be received from the customers;

(e) That the RBI vide Circular 8/2005-06 dated 01.07.2005 had clarified that a status holder exporter could export goods free of cost to the extent of 2% of average annual exports realization towards the preceding three licensing years or Rs.10 lakhs which is higher for which there will be obviously no requirement of realization of foreign exchange;

(f) That the Government cannot retain the amount collected without any authority of law and the duty paid by them should be treated as a deposit and they should be allowed to either take re-credit of the same or the rebate needs to be sanctioned; they cited several other decisions in support of their argument;

(g) That the Show Cause Notice dated 05.08.2015 had not raised the objection that the FOB value for 150 Kg as per the ARE-1 No.524 dated 04.03.2015 was zero and rebate claimed was Rs.3,20,625/- and that the applicant had violated condition 2(e) of notification no.19/2004-CE(NT) and hence the Order-in-Original which raised the same had traveled beyond the Show Cause Notice and so did the impugned Order-in-Appeal which upheld the Order-in-Original; they cited several decisions in support of their argument.

In view of the above the applicant prayed that the portion of the impugned Order-in-Appeal pertaining to Order-in-Original dated 01.09.2015 be set aside.

4. Personal hearing in the matter was held on 29.12.2022 and Shri Ashok Nawal, Consultant appeared online on behalf of the applicant. He submitted that free samples had inherent market value and it was wrong to say that these had no value. He further submitted that they were claiming rebate of duty already paid on free samples. He reiterated their earlier submissions and requested to allow rebate.

5. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Original and Order-in-Appeal.

6. Government notes that the short issue involved in the instant case is whether the applicant is eligible to claim rebate of the amount of Central

Excise duty paid on goods exported by them on a 'free of cost' basis'. At the onset, Government finds the submission of the applicant that the lower authorities had travelled beyond the Show Cause Notice to be incorrect, as the Show Cause Notice clearly mentions the Shipping Bill indicates the value of the consignment in question to be 'Zero' as one of deficiencies. Thus, the crux of the present issue was raised by the Show Cause Notice and hence this argument of the applicant will not hold good. Government finds that the Commissioner (Appeals) has relied upon the decision of the Revisionary Authority in the case of M/s Ranbaxy Laboratories [2013 (293) ELT 137] wherein it was held that as no commercial value was mentioned in the export invoices the market value of the consignment being exported became NIL. Government finds that the said decision has not been set aside by any higher authority and hence still holds good. The facts of the instant case being the same, the market value of the export consignment in the present case would also be NIL, thus violating the condition at 2(e) of the notification no.19/2004-CE(NT) which requires that the market value of the export consignment should be higher than the rebate claimed. In view of the above, Government finds that the applicant will not be eligible for the rebate claimed by them in the instant case and accordingly holds so.

7. Having held so, Government finds that it is not in dispute that the goods in question have been exported and that duty on the same has been paid by the applicant. Given these facts, Government finds that Revenue cannot retain the duty of excise paid by the applicant on the goods which have been exported and the same needs to be paid back to the applicant in the manner in which it was paid by them. Government finds that the applicant themselves have submitted that they should either be allowed to take re-credit of the amount paid or granted rebate of the same. Government finds that the Hon'ble High Court of Punjab and Haryana in the case of Nahar Industrial Enterprises Limited vs UOI [2009 (235) ELT 22 (P&H)] had held that such amounts cannot be retained by the Government without authority of law and that the same has to be paid back in the manner paid by the exporter. In view of the same, Government holds that the amount of

duty paid by the applicant on the said export consignment should be refunded to them in the manner paid by them, under the existing law.

8. The Revision Application is disposed of in the above terms.

Shrawan
28/3/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.195/2023-CX (WZ) /ASRA/Mumbai dated 28.03.2023

To,

M/s Sun Pharmaceutical Industries Limited,
Acme Plaza, Andheri Kurla Road,
Andheri (E), Mumbai – 400 059.

Copy to:

1. Commissioner of CGST & Central Excise, Mumbai East, 9th floor,
Lotus Info Centre, Station Road, Parel (East), Mumbai – 400 102.
2. Commissioner of CGST & Central Excise, (Appeals – II) Mumbai, 3rd
floor, Utpad Shulk Bhavan, Plot no.C-24, Sector – E, Bandra-Kurla
Complex, Bandra (East), Mumbai – 400 051.
3. M/s A B Nawal & Associates, “F Residences”, Unit No.1001 & 1004, 10th
floor, A 1 Building, S. No.45, New Baner Hinjewadi Link Road, Balewadi,
Pune – 411 045.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Notice Board.