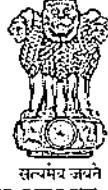


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GOVERNMENT OF INDIA.
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/65/WZ/2018-RA

255

Date of Issue:

21.02.2022

ORDER NO. 196 /2022-CX (WZ)/ASRA/MUMBAI DATED 17.02.2022
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. Lupin Ltd.

Respondent : Pr. Commissioner of CGST, Palghar.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
NA/GST A-III/MUM/459/17-18 dated 27.02.2018 passed
by Commissioner, GST and Central Excise, Appeals-III,
Mumbai.

ORDER

This Revision Application is filed by M/s. Lupin Ltd., T-142, MIDC, Tarapur, Boisar – 401 506 (hereinafter referred to as “the Applicant”) against Order-in-Appeal No. NA/GST A-III/MUM/459/17-18 dated 27.02.2018 passed by Commissioner, GST and Central Excise, Appeals-III, Mumbai.

2. Brief facts of the case are that the Applicant, a manufacturer exporter, had filed a rebate claim on 23.05.2017 totally amounting to Rs. 45,43,578/- for the clearances made to a Special Economic Zone (SEZ) unit under Notification No.19/2004 CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 read with section 11B of the Central Excise Act, 1944 read with Rule 30 of the SEZ Rules, 2006. The adjudicating authority, Deputy Commissioner of Central Excise & Service Tax, LTU, Mumbai, vide Order-in-Original No. LTU/MUM/CX/GLT-4/R-196/2017-18 dated 21.06.2017, held that for the purposes of Section 11B, the date of export of goods was when the goods had entered / were received in the SEZ and therefore the rebate claim should have been filed within one year from the date of shipment. Accordingly, he rejected the rebate claim filed by the applicant. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) The Applicants have filed documents for acceptance for proof of export on 21.12.2015 and 30.12.2015 for exports made under 107 ARE-Is. In the said acceptance of POE, the disputed supplies vide the following ARE-I s are also included.

S. No.	ARE-I No. & Date	Invoice No. & date
1.	37/05.05.15	245/05.05.15
2.	38/05.05.15	246/05.05.15
3.	49/13.05.15	308/13.05.15
4.	81/11.06.15	528/11.06.15
5.	90/20.06.15	576/20.06.15

(b) Ld. Supdt., LTU has also accepted the proof of export vide his letter dtd. 29.2.2016 for supplies/exports made under 122 ARE-Is including the disputed ARE-I s mentioned at Sr. Nos. 114 to 118 as reproduced below:

Sr. No.	ARE-I No.	Date	Amount	Shipping Bill No. & Date
114	37	05.05.2015	156615	SEZ
115	49	13.05.2015	323388	SEZ
116	38	05.05.2015	56532	SEZ
117	81	11.06.2015	184206	SEZ
118	90	20.06.2015	3822837	SEZ

(c) From the above it is clear that the Applicants have staked the claim by submitting proof of export on 21.12.2015 and 30.12.2015 which has to be taken as the date of filing of refund claim, in which case, the claims would be within time.

(d) It is a settled position of law that date of staking claim is relevant which view gets substantiated from the ratio of the following judgments:

- i GTC Ltd. - 1989 (42) EL T 29 (T)
- ii Wood Working Centre- 1996 (85) ELT201 (T)
- iii Andhra Pradesh Paper Mills Ltd. 1998 (28) RI T 289 (T)
- iv U.P.State Sugar Corporation Ltd. - 1998 (100) EL T 541 (T)
- v KLRF Textiles- 1999 (33) RLT544 (T)
- vi United Phosphorus - 2005 (184) EL T 240 (Guj)

(e) In view of the above, the Applicants filing of a formal refund claim on 23.5.2017 cannot be taken into account for the purpose of computation of limitation under Section 11B, when the Applicants had already stake the claim vide their letter dtd.21.12.2015 and 30.12.2015. Ld Commissioner (Appeals) findings that the dates of forwarding of ARE for purpose of issue proof of exports as the date of filing of rebate claim is unsustainable and reliance on judgements in the case of Mafatlal Industries - 1997 (89) ELT 247 (SC) and Jumax Foam Pvt. Ltd. -2003 (157) ELT 252 (Del.), is thus misplaced and without appreciating the factual position and provisions of law.

(f) It is settled position of law that once the fact of export has not been disputed by Ld. Revenue, rebate is not deniable, for procedural/Technical lapse, if any, based on the following judgments:

- i. Tablets India Ltd. - 2010 (259) ELT 191 (Mad.)
- ii. Ashok Layland Ltd. - 1999 (105) EL T 30 (Mad.)
- iii. Ambadi Enterprises Ltd - 2007 (219) EL T 917 (Tri)
- iv. Stainless India Ltd. - 2008 (222) EL T 210 (Tri)
- v. Barrot Exports - 2006 (203) EL T 321 (G.O.I.)
- vi. Leighton Contractors - 2011 (267) EL T 422 (G.O.I.)
- vii. Alpha Garments - 1996 (86) EL T 600 (Tri)

(g) The Applicants respectfully submit that the Order-in- Original has been passed in gross violation of principles of natural justice without issue of SCN and affording personal hearing and hence, Order-in-Original itself was not sustainable based on the following judgments:

- i. 1981 ELT 184 (Mad) - Nuwood Private Limited, Madras
- ii. 1982 ELT 436 (CBEC) - K.S.Subbiah Pillai Co.(India) Pvt.Ltd.
- iii. 1991 (53) ELT 8 (Tri) - Sakha Ram Verma
- iv. 1982 ELT 350 (P & H) - Dalmia Biscuits (P) Ltd.

(h) Since the Order-in-Original itself was not sustainable, Ld. Commissioner (Appeals) upholding of the Order-in-Original is also without authority of law.

In the light of the above submissions, the applicant prayed:

- i. that it may be held that filing of proof of export has to be taken as date of filing of rebate claim;
- ii. that it may be held that date of staking of refund claim relevant for computation of period of limitation;
- iii. that it may be held that when the fact of export is not in dispute, rebate is not deniable;
- iv. that it may be held that the impugned Order passed in gross violation of principles of natural justice is not sustainable;
- v. that it may be held that the impugned Order-in-Original rejecting the rebate claim is not sustainable on merits and deserves to be set aside;
- vi. that the Applicants be heard in person before decision in the appeal application;
- vii. for such further and other reliefs as the nature and the circumstances of the case may require

4. Personal hearing in the case was fixed for 28.10.2021. Shri Rohit Bajaj, General Manager (Indirect Tax), attended the online hearing and reiterated the earlier submissions.

5. 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.

6. Government observes that the issue involved is whether the rebate claim filed by the Applicant is time barred as per Section 11B of the Central Excise Act, 1944?

7.1 Government observes that the details of impugned rebate claim are as under:

Rebate claim no. & Date	ARE-I No & date	Date of admittance of goods in full into SEZ by authorized officer	Description of goods	Amount of duty paid/ Rebate claimed	Invoice Nos & date issued under Rule 11 of CER,2002
519/ 23.05.17	37/05.05.15	22.05.2015	Duloxetine Hydro	156615.00	245/05.05.15
	38/05.05.15	22.05.2015	Duloxetine Hydro	5632.00	246/05.05.15
	49/13.05.15	22.05.2015	Tenfovir Disoproxil	32388.00	308113.05.15
	81/11.06.15	17.06.2015	Memantine	184206.00	528/11.06.15
	90/20.06.15	23.06.2015	Valsar Tan	3822837.00	576/20.06.15
			TOTAL	45,43,578/-	

Thus, though the clearances were effected in May-June 2015, the rebate claim was filed on 23.05.2017, viz. after around two years.

7.2 Government observes that the concerned Section 11B of the Central Excise Act, 1944 reads as under:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty : -
(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed

Government observes that Rule 30(9) of the Special Economic Zone Rules, 2006 reads as under:

(9) A copy of the Bill of Export and ARE-1 with an endorsement of the Authorised Officer that the goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.

7.3 Thus, the date on which the goods are admitted in the Special Economic Zone will have to be treated as "relevant date". Government observes that in the instant case the relevant dates were 22.05.2015, 17.06.2015 and 23.06.2015. Therefore the rebate claim filed on 23.05.2017 was beyond the stipulated period of one year from relevant date/s.

8.1 Government finds that the contention of the applicant that submission of proof of export should be considered as the date of filing of refund claim cannot be accepted. As per Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 issued under Rule 18 of the Central Excise Rules, 2002, a proper rebate claim accompanied with stipulated documents is required to be filed with jurisdictional Deputy/Assistant Commissioner of Central Excise for refund of duties paid on goods exported. Government further observes that submission of stipulated documents indicating that the goods have been admitted in full in the Special Economic Zone (proof of export) with jurisdictional central excise authorities is a requirement under Rule 30(4) of Special Economic Zone Rules, 2006:

(4) A copy of the ARE-1 and/or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that goods have been admitted in full into the Special Economic Zone shall be forwarded to the Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Central Excise Officer shall raise demand of duty against the Domestic Tariff Area supplier.

Thus, submission of proof of export by the applicant was in compliance with the mandatory provisions and cannot be considered a claim for rebate under Rule 18 of the Central Excise Rules, 2002.

8.2 Government finds that the other contention of the applicant that once the fact of export has not been disputed by the Department, rebate is not deniable, for procedural/Technical lapse, also cannot be accepted. Filing of rebate claim within one year from the relevant date is a statutory

requirement which is required to be mandatorily adhered to and is non-condonable. Various judgments in this regard have also been passed including the ones relied upon by the Appellate authority. In a recent judgment in a matter relating to GST, the Hon'ble Gujarat High Court had in the case of Mohit Minerals Pvt. Ltd. vs. UOI[2020(33)GSTL 321(Guj.)] held that:

"151. It is a settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation derives power from the parent statute and not without it. The delegated legislation is to supplant the statute and not to supplement it."

Thus, the statute is sacrosanct and is required to be followed religiously.

8.3 As regards the applicant's contention that Order-in- Original has been passed in gross violation of principles of natural justice without issue of SCN and affording personal hearing, Government observes that as the issue of time bar is non-condonable, as discussed in previous para, there was no point in seeking reply from/providing opportunity for personal hearing to the applicant by the rebate sanctioning authority.

9. In view of the findings recorded above, Government upholds the Order-in-Appeal No. NA/GST A-III/MUM/459/17-18 dated 27.02.2018 passed by Commissioner, GST and Central Excise, Appeals-III, Mumbai and rejects the impugned revision application filed by the applicant.

10. The Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 196 /2022-CX (WZ)/ASRA/Mumbai dated 17.02.2022

To,
Lupin Ltd.,
T-142, MIDC, Tarapur,
Boisar - 401 506.

Copy to:

1. Commissioner of CGST, Palghar,
5th Floor, Kendriya, GST Bhawan,
BKC, Bandra (E), Mumbai – 400 051.

~~2. Sr. P.S. to AS (RA), Mumbai~~
3. Guard file
4. Notice Board.