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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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**F.No 198/37/WZ/2018-RA**

*2023*

**Date of Issue: 12.04.2023**

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ORDER NO. 220/2023-CX (WZ) /ASRA/MUMBAI DATED 12.04.2023 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:** The Commissioner, CGST & Central Excise, Thane Rural  
Commissionerate

**Respondent:** M/s Jubilant Life Sciences Ltd  
Plot No. 34, MIDC, Anand Nagar, Ambernath (East)  
Thane 421 506

**Subject :** Revision Application filed under Section 35EE of Central Excise  
Act, 1944 against the Order-in-Appeal No. SK/24/Th-I/2017  
dated 10.02.2017 passed by the Commissioner of Central Excise  
(Appeals I), Mumbai

**ORDER**

The Revision Application has been filed by the Commissioner, CGST and Central Excise, Thane Rural (hereinafter referred to as the 'Department' or 'Applicant') against the Order-in-Appeal No. SK/24/Th-I/2017 dated 10.02.2017 [Date of issue: 13.02.2017] passed by the Commissioner of Central Excise (Appeals I), Mumbai.

2.1. Brief facts of the case are that the Respondent filed a rebate claim for Rs. 3,85,188/- on 11.04.2012 under Rule 18 of the Central Excise Rules, 2002, read with Notification No 19/2004-CE(NT) dated 06.09.2004, in respect of goods exported under ARE-1 No 18 dated 17.02.2012. The rebate claim was sanctioned vide Order No. R-622/2013-14 dated 16.05.2013.

2.2. On further scrutiny it was observed that the said duty amount in respect of the said ARE-1 was paid by the Respondent through the Cenvat account and the balance credit was far below the carried forward credit at the time of EOU getting converted into DTA. Since the duty on the exported goods was paid from the balance credit of EOU, which had lapsed on the EOU converting into DTA, the Respondent was not eligible for the rebate claim. Letter dated 03.06.2013 was issued to the Respondent to pay back the amount sanctioned and paid, alongwith interest.

2.3. Also SCN dated 28.06.2013 was issued for recovery of erroneous claim paid to the assessee. The Original Adjudicating Authority vide Order-in-Original No 21/2015-16 dated 15.10.2015 dropped the proceedings against the Respondent vide SCN dated 28.06.2013.

3. Aggrieved by the said Order-in-Original dated 28.06.2013, the Applicant filed an appeal before the Appellate Authority i.e Commissioner of Central Excise (Appeals I), Mumbai, who vide Order-in-Appeal No. SK/24/Th-I/2017 dated 10.02.2017 [Date of issue: 13.02.2017] rejected the appeal filed by the Department

4. Aggrieved by the said Order-in-Original, the Applicant initially filed an appeal before CESTAT, West Zonal Bench who vide Order No. A/90145/17/SMB dated 29.09.2017, observed that *“As the matter relates to rebate, Tribunal has no jurisdiction to hear appeal thereon. It is left open to Revenue to seek appropriate remedy if so advised.”* and dismissed the appeal as not maintainable.

5. Subsequently, the Applicant filed a revision application against the impugned Order-in-Appeal on the following grounds:

5.1. That the judgement in the case of Technocraft Inds(I) Ltd vs. CCEX, Thane-I [2011(274) E.L.T. 446(Tri-Mumbai) it is stated that ‘however, the issue in the instant case is “CENVAT credit lying in balance on the date of debonding stands lapsed”

5.2. That CBEC Circular No 77/99-Cus dated 18.11.1999 clearly states that Cenvat credit lying in balance on the date of conversion would lapse and can no ne utilized after such conversion;

5.3. That Rule 10 of the CCR, 2004 also does not permit transfer of unutilized cenvat credit lying in balance in case of conversion of an 100% EOU to DTA unit;

Under the circumstances, the Applicant prayed to set aside the OIA and OIO and stay the OIA

6. The Respondent filed their reply to the revision application as under:

6.1. That the reliance of the Department upon the judgment in the case of M/s Technocraft Industries (India) Limited, [2014 (313) ELT 888 (GOI)] and CBEC Circular No. 77/99-Cus dated 18.11.1999 and Rule 10 of Cenvat Credit Rules, 2004 is incorrect as in the present case the issue is that of utilization of cenvat credit by the company rather than eligibility of carried forward cenvat credit of EOU to DTA.;

6.2. That the excise duty on the excisable goods cleared from the factory February 2012 was to be paid on or before 05.03.2012, either by payment in cash or by debit in the CENVAT account and CENVAT credit can be utilised to the extent of balance available on 29.02.2012.

6.3. That as per the relevant ER-1 return, CENVAT credit taken on input services during the month of February, 2012 was higher than the amount of service tax credit utilised for payment of duty during the month. Therefore, the duty was paid out of fresh service tax credit taken during the month of February, 2012 and the CENVAT credit carried forward from the period when the Unit was functioning as an EOU has not been utilised during the month.

6.4. That debit entry in the CENVAT account on 17.02.2012 does not amount to utilisation of credit when the liability to pay such duty arises only on 05.03.2012. Therefore, the revision application filed by the department is based on incorrect appreciation of the facts

6.5. That the Department has not countered the finding of AA at Para 8 and 8.1 of the impugned OIA and the OAA had passed the order after verifying the facts and PLA payment of Rs 93.531/- (1,23,82,459-122,88,928) and payment of interest for differential amount in credit

In view of the above submissions, the Respondents averred that the revision application be dismissed.

6. Personal hearing was scheduled in this case on 13.10.2022 or 03.11.2022, 09.12.2022 or 23.12.2022, 16.01.2023 or 25.01.2023. Shri Dharmendra Sharma, Associate Director, Indirect Taxes appeared online for the hearing on 25.01.2023, on behalf of the Respondent. He submitted that disputed credit amount was again debited in October 2012 out of fresh credit availed as a DTA unit alongwith applicable interest. He contended that there remaining no dispute regarding payment of duty and export of goods, rebate is admissible. He requested to uphold the Commissioner (Appeals) order. No one appeared for the hearing on behalf of the Applicant.

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.

7.1. Government observes that the argument of the department in the revision application is that the cenvat lying in balance as on the date of conversion of an 100% EOU to DTA unit would lapse and cannot be utilized after the conversion. The Department has relied upon the Circular No 77/99-Cus dated 18.11.1999, Rule 10 of the Cenvat Credit Rules, 2004 and the judgement in the case of M/s Technocraft Industries (India) Limited to further their arguments. The Respondent on the other hand has averred that the utilization of cenvat credit is the moot point rather than eligibility of carried forward credit.

7.2. Government opines that the instant case is based on the factual verification of whether the duty was paid out of fresh credit for the month of February 2012 or from the carried forward credit, which has been done by the lower authorities in detail before arriving at the decision in respect of the rebate claim in question.

7.3. The Appellate Authority at Para No 8 and 8.1 of the impugned Order-in-Appeal has stated as under:

*"With regard to the question of whether the respondent had sufficient cenvat credit balance, the Revenue in their Grounds of Appeal contended that as per ER-1 return for the month of December, 2011, the respondent claimed credit of Rs.1, 23,82,459/- on the date of debonding and if the same is not utilized then the closing of each subsequent month should have been either equal or more than the said amount. However ER-1 return for the month of February 2012 shows closing balance of Rs.1,22,88,928/- with indicates utilization of carried forward Cenvat credit. The Revenue has not produced any documentary evidence in support of this claim.*

*However, I observe that the difference between credit claimed by the respondent on the date of debonding and closing balance for the month of February, 2012, as contended by the Revenue is Rs.93,351/-. Even if it is assumed that the respondent has utilised the carried forward credit of Rs.93,531/-, there is no dispute that the same has been paid by the respondent vide entry no. 811 dated 01.10.2012 along-with interest Rs.9,871/- vide PLA entry no. 01 dated 01.10.2012. I therefore find that the issue involved in the present appeal is restricted to utilization of carried forward cenvat credit and not that of eligibility of accumulated cenvat credit of EOU to DTA. When there is no dispute that the*

*goods were exported and that the duty stands discharged on said goods, the respondent is entitled to the rebate of duty paid. I therefore find that the lower adjudicating authority has rightly dropped the proceedings under the impugned order. I therefore find that Revenue's appeal on this ground is not sustainable."*

7.4. In view of the above, Government is of the view that the verification of the utilization of cenvat credit for discharge of duty in prescribed manner has been done by the lower authorities and pursuant to the verification, the Original Adjudicating Authority and the Appellate Authority have held that the rebate claim filed by the Respondent to be in order. Government concurs with the Order-in Appeal and is not inclined to interfere with the same.

8. In view of the above, Government rejects the Revision Application filed by the Applicant and upholds the Order-in-Appeal No. SK/24/Th-I/2017 dated 10.02.2017 [Date of issue: 13.02.2017] passed by the Commissioner of Central Excise (Appeals I), Mumbai.

9. The Revision Application is dismissed as being devoid of merits

  
31/3/23  
(SHRAWAN KUMAR)

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

ORDER NO. 220/2023-CX (WZ) /ASRA/MUMBAI DATED 31 .03.2023

To,

The Commissioner of CGST, Thane Rural,  
4<sup>th</sup> Floor, CGST & Central Excise Bhavan,  
Bandra Kurla Complex, Bandra (East),  
Mumbai 400 051

Copy to:

- 1) M/s Jubilant Life Sciences Ltd, Plot No N-34, MIDC, Anand Nagar, Additional Ambarnath, Ambarnath (East), Dist Thane.
- 2) The Commissioner of CGST, Thane Appeals, 12<sup>th</sup> Floor, Lotus Info Centre, Near Parel Station (East), Mumbai 400 012

- 3) Sr. P.S. to AS (RA), Mumbai.
- 4) Notice Board.
- 5) Spare copy.