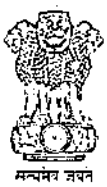
REGISTERED
SPEED POST



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. 195/15/2019-RA /2059 Date of issue: 12.04.2023

ORDER No. 221/2023-CX (WZ)/ASRA/MUMBAI DATED 5.4.2023 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. Lupin Limited

Respondent : Commissioner, CGST, Aurangabad

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. NSK-EXCUS-000-APPL-525-18-19 dated 19.11.2018 passed by Commissioner (Appeals), GST & C.Ex., Nashik.

ORDER

This Revision Application has been filed by M/s. Lupin Limited (hereinafter referred to as "the Applicant") against Order-in-Appeal No. (OIA) NSK-EXCUS-000-APPL-525-18-19 dated 19.11.2018 passed by Commissioner (Appeals), GST & C.Ex., Nashik.

2. Brief facts of the case are that the applicant is engaged in manufacture of excisable goods viz. Pharmaceutical Products falling under chapter heading 30 of CETA, 1985. The Applicant had filed a rebate claim of Rs.10,66,845/- on 17.10.2017 under Notification no. 19/2004 CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 (CER) read with Section 11B of Central Excise Act (CEA), 1944. The rebate sanctioning authority rejected the claim vide Order-in-Original No.564/CEX/AC/RBT/17-18 dated 20.03.2018. Aggrieved the applicant filed an appeal which was rejected by the Appellate authority vide impugned OIA.

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

(a) The Ld. Commissioner-Appeal has travelled beyond the allegations mentioned in the Show Cause notice and the Order in Original. There is no allegation in the said show cause notice and in the said OIO disputing the duty paying nature of the said input and availment of cenvat credit on the said input. However, he preferred to rely on a new allegation that the inputs were not duty paid and no cenvat credit was availed on the said input. The impugned order deserves to be rejected on this very ground.

(b) For the above allegation, it is submitted that the applicant had in fact sent copy of the said BE on the very next day of the personal hearing, in the official E-mail ID as mentioned the PH letter, as

advised by the Commissioner-Appeals. The subject input was imported vide Bill of Entry No.7781335 dated 23.12.2014. The duty was paid through debit in FPS scrip No.0319009993 under Notification No.092/2009-cus dated 11.09.2009, as mentioned in the said BE.

(c) So, as submitted in the above para and as per the relevant documents, it is proved beyond doubt that the said inputs were duty paid and applicant are entitled for cenvat credit of the said duty paid through the said scrip. Further, the applicant has availed cenvat credit of the said CVD and ADC in their cenvat credit register vide entry No.2981 dated 19.01.2015.

(d) The documents BE, FPS Notification, Cenvat credit register prove beyond doubt that the said inputs were duty paid, the applicant was entitled for cenvat credit, the said cenvat credit was availed and the proportional cenvat credit was reversed while exporting the part quantity of the said input.

(e) Further, as the said input is duty paid, cenvat credit availed thereof and credit proportionally reversed, the contention of the Commissioner-Appeals, that the said Circular No.283/117/96-EX dated 31.12.1006 is not relevant to the present case stating that the said input is not duty paid, is also proved to be totally wrong. The said circular is proved to be very much relevant in the present case as the said inputs were duty paid and proportional duty was paid while exporting.

(f) The case law in the matter of Finolex Cables, as referred and differentiated in the impugned order, is identically applicable in the present matter as well. When the circular No.283/117/96-EX dated 31.12.1996 is totally applicable in the present case, the concept of

manufacturing doesn't arise at all for claiming rebate on inputs exported. As such the applicant are not referring to any further case laws other than what are referred by them in their appeal to Commissioner-Appeals

In the light of the above submissions, the applicant prayed to set aside the impugned Order-in-Appeal and allow their RA with consequential relief.

4. Personal hearing in the case was fixed for 11.1.2023. Shri Rohit Bajaj, CA, attended the hearing online and submitted that the issue pertains to rebate of inputs exported on debit of Cenvat/CVD credit availed. He mentioned orders of Revisionary authority on the subject and requested to allow the application. No one appeared for the respondent nor have they sent any written communication.

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

6. Government observes that the issue involved in the instant case is whether the rebate of duty paid on export of inputs is eligible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004.?

7. Government observes that the matter in hand can be summarized as follows:

i. The applicant is engaged in manufacture of pharmaceutical products and had imported raw material viz. 'cycloserine' and taken Cenvat credit of the CVD and AED paid thereon vide Bill of Entry No. 7781335 dated 22.12.2014.

ii. Subsequently, they exported a part of the said imported consignment back to their supplier, being found unsuitable for use in manufacture

of their final product under ARE1 No.RE-EXP/002/2016 dated 24.10.2016

iii. The exports were carried by paying applicable duty through Cenvat credit. A rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 for the duty reversed while clearing the said export goods was filed - Excise duty of Rs.7,76,151/- + Addl. Excise Duty of Rs.2,90,694/-, totally amounting to Rs.10,66,845/-

iv. The rebate sanctioning authority rejected the claim on the grounds that *the claimant had not fulfilled the pre-condition of processing or use in manufacturing as required under Rule 18 ibid. Further, as the raw material was exported as such, there was no value addition.*

v. The Appellate authority rejected the appeal of as he found that the applicant had failed to produce any evidence to show payment of CVD and therefore concluded that Cenvat credit claimed to have been availed on that account was not proved and it appeared that the applicant was trying to encash accumulated Cenvat credit.

8.1 Now, Government proceeds to decide the issue of admissibility of rebate claims taking into account the harmonious and combined reading of statutory provision relating to rebate as well as the additional Customs duty leviable under Section 3(5) of the Customs Tariff Act, 1975.

8.2 Rule 18 of the Central Excise Rules, 2002 reads as under:

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification

Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at the time of clearance of excisable goods for export can be claimed. There is

no doubt that the goods exported by the applicant were excisable and therefore they had cleared it on payment of applicable Central Excise duty.

8.3 The relevant extracts of Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 read as under:

> *In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R.469(E), dated the 26th June, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter.....*
>
> *Explanation I - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:*
>
> *(a) the Central Excise Act, 1944 (1 of 1944);*
>
> *(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
>
> *(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*
>
> *(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);*
>
> *(e) special excise duty collected under a Finance Act;*
>
> *(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);*
>
> *(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004.*

Government observes that the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 relates to export of excisable goods on payment of duty and allows rebate of whole of duty paid at the time of export. It also explains meaning of duty for the purpose of said notification.

8.4 Government observes that in the instant case the applicant had paid applicable Excise duty amounting to Rs.7,76,151/- at the time of clearance of export goods 'Cycloserine' classified under CETH 29419090 from their factory at Aurangabad vide invoice no. 241 dated 24.10.2016. The payment of this duty has not been disputed by either of the lower authorities. Therefore, Government does not agree with the grounds for rejection by the original/appellate authority mentioned at para 7 and concludes that the applicant is eligible for rebate of Excise duty amounting to Rs.7,76,151/- under Rule 18 ibid.

9.1 Government notes that the 'Additional Excise Duty/Special Additional Duty' is levied under the Section 3(5) of the Customs Tariff Act, 1975 which reads as under:

> ***Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. –***
>
> *(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four percent of the value of the imported article as specified in that notification.*

Thus, Government observes that this levy is imposed at the time import of goods.

9.2 Government notes that the Rule 3(1)(viia) of the Cenvat Credit Rules, 2004 allows an assessee to take credit of Additional Excise Duty (AED):

> ***Rule 3. CENVAT credit. -***
>
> *(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -*
>
> .
>
> .
>
> *(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*
>
> *(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act;*

9.3 Government observes that the rebate claim filed by the applicant was in respect of Basic Excise Duty and Additional Excise Duty paid at the time of export. Government observes that the AED leviable under sub-section (5) of section 3 of the Customs Tariff Act do not find a mention in the Explanation-I of the said Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 and thus cannot be termed as a duty of excise and was therefore not required to be paid at the time of clearance for export. However, in plethora of judgments, it has been held that any amount paid in excess of duty liability is to be treated as voluntary deposit with the Government which is to be returned in the manner in which it was paid. Therefore, Government concludes that the amount paid towards AED is required to be re-credited to the Cenvat credit account of the applicant.

10. In view of the above discussions, Government sets aside the Order-in-Appeal No. NSK-EXCUS-000-APPL-525-18-19 dated 19.11.2018 passed by Commissioner (Appeals), GST & C.Ex., Nashik.

11. The Revision Application is disposed of on above terms.

Shrawan 5/4/23

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

ORDER No. 221 /2023-CX (WZ)/ASRA/Mumbai dated 05.4.2023

To,
M/s. Lupin Limited,
7th Floor, Kalpataru Inspire,
off Western Express highway,
Santacruz East, Mumbai – 400 055.

Copy to:

1. Commissioner of CGST,
   N-5,Town Centre, CIDCO,
   Aurangabad – 431 003.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.