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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.195/927/13-RA/5841 Date of Issue: - 06/10/2021

ORDER NO. 238 /2021-CX(WZ)/ASRA/MUMBAI DATED 30.09.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT,1944.

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. DMN-EXCUS-000-APP-159-13-14 dated 20-08-2013 passed by the Commissioner of Central Excise (Appeals), Daman.

Applicant: M/s Cipla Ltd

Respondent: 1) Commissioner (Appeals) Central Excise & Customs, Daman.

And

2) Assistant Commissioner, Central Excise & Customs, Vapi-I

ORDER

This Revision applications is filed by M/s Cipla Ltd., Mumbai (Hereinafter referred to as 'applicant') against the Order-in Original No. Vapi-I/Rebate/377/2012-13 dated 15-03-2013 passed by Assistant Commissioner, Division-I, Vapi and Order-in-Appeal No. DMN-EXCUS-000-App-159-13-14 dated 20.08.2013 passed by the Commissioner (Appeals) Central Excise & Customs, Daman.

2. The Brief facts of the case are that the applicant M/s Cipla Ltd. are engaged in the business of manufacturing as well as export of Pharmaceutical goods falling under Chapter 30 of CETH of Central Excise Tariff Act, 1985. They have their own manufacturing units and they procure goods from various manufacturer located across the country. In this case M/s Cipla Ltd (as Merchant Exporter) procured goods for export from the factory of M/s S Kant Healthcare Ltd and cleared the same on payment of duty under claim of rebate as per Notification 19/2004-CE (NT) dated 6-9-2004. The merchant exporter filed three rebate claims for Rs. 22,706/-, Rs.45,747/- and Rs.1,00,830/-.

3. In the instant revision application, rebate claims were rejected by the original authority vide Order in original No. Vapi-I/Rebate/377/2012-13 dated 15-03-2013. The rebate claim was rejected on the following issues,

3.1 Declared in the Original and duplicate copy of the ARE-1, the address of the Maritime Commissioner for filing Rebate Claim, however filed the claim with the jurisdictional A.C./D.C of C.EX & Customs, Vapi-I, Division;

3.2 Non- submission of Triplicate copies of ARE-1;

3.3 Rate of duty paid at higher rate i.e @10% instead of the effective rate of duty of 5.15%;

3.4 No time of removal of export goods has been mentioned in the ARE-1.

4. Being aggrieved by the said Order-in-Original applicants filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld the impugned Order-in-Original for the following reasons:

a) The applicant had submitted the NOC obtained from Mumbai-I Maritime Commissioner stating that they have neither received nor sanctioned the said rebate claims with the jurisdictional Vapi Division. However, they have not submitted a similar NOC from Raigad Maritime Commissioner.

b) The manufacturer did not submit the Triplicate copy of ARE1, Excise invoice, stock account within the prescribed time limit to examine the assessment and its correctness. Hence no verification in respect of duty payment was carried out by the jurisdictional officers.

c) In respect of the duty paid at higher rate i.e. @10% instead of the effective rate of duty of 5.15%, Commissioner Appeals held that the issue of payment of duty at the effective rate or otherwise would arise only when the duty payment stands certified by the competent authority. In this case since the duty payment itself is not verified, the sanction of the rebate at effective rate or otherwise becomes irrelevant.

5. Being aggrieved with the said OIO and Order-in-Appeal, applicants have filed these revision applications before Central Government under Section 35EE of Central Excise Act, 1944 on the grounds mentioned in each application.

6. A Personal Hearing was granted to the applicant in view of the change in Revisionary authority on 1.12.2020, 4.12.2020, 9.12.2020 and16.03.2021. No one appeared for the hearing on behalf of the Revenue and the claimant. The applicant had filed additional submissions dated 28.06.2018, earlier, wherein they mainly contended as under:-

a) Address not mentioned in the ARE1 as the Jurisdictional Assistant Commissioner Vapi-I Division.

It is submitted that the said goods were exported through two different ports viz Air Cargo Sahar and JNPT Nhava Sheva and is practically difficult to submit rebate claims with two different authorities in consideration of their jurisdiction. Hence they filed the rebate claim with the A.C of Central Excise, Division- Vapi who has jurisdiction to sanction rebate of goods cleared from the factory situated within their jurisdiction. They have also submitted they have submitted the No objection Letter obtained from Maritime Commissioner stating that they have not sanctioned the said rebate claim.

b) Triplicate ARE-1 not submitted:

The Triplicate copy was submitted to the jurisdictional authority who refused to accept the triplicate copy since the duty was paid at higher rate and subsequently the ARE1s were sent through speed post which they were asked to withdraw. They had no reason for non-submission of the ARE1. They also referred to Vapi Division's letter dated 31-05-2012 wherein it is stated that 184 ARE1s are submitted and duty has been paid at the higher rate.

They further submitted that till date they have not received any demand for the payment of excise duty or in respect of clandestine removal of the said goods. Hence they have submitted that it is not correct to punish the exporter without having any such records about nonpayment of Government duties and the Notification does not hold the claimant responsible for submission of triplicate copy of ARE1.

c) Time of Removal not mentioned on the ARE-1:

The claimant has submitted that not mentioning the time of removal is a technical mistake and to condone the same. However the date and time of removal of the consignment is mentioned in the Central Excise Invoice which is also a statutory document as per the Central Excise Act, 1944.

d) Issue Involved Duty Paid @ 10% on goods cleared for export market-

i) In this matter, the applicant has submitted that as concerns duty paid @10% the matter is already settled by this office vide Order No. 1568-1595/2013-Cx dated14-11-2012.

ii) In their additional submissions the applicant has stated that, as per the provision of Clause(a) of Sub-section (6) of Section 142 of CGST Act, 2017, 'every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law, other than the provisions of subsection (2) of Section 11B of the Central Excise Act, 1944 and the amount rejected , if any shall not be admissible as input tax credit under this Act'. Hence they requested to consider for allowing cash rebate instead of Cenvat credit.

7) In view of the submissions, facts and available records the claimant requested to decide this Revision Application's by setting aside the A.C, Vapi Division's OIO and Commissioner (Appeals) OIA and give direction to sanction their rebate claims.

8) Government takes up the Revision Application No. 195/927/13-RA (arising out of Order in Appeal No. DMN-EXCUS-000-App-159-13-14 dated 20-08-2013) at Sr.No.1 of table at para 1.

9) Government has carefully gone through the case records, the written submissions made by the applicant, their additional, the revision application filed by them, the order passed by the adjudicating authority and Commissioner Appeals. Government observes that the all the three rebate claims were rejected for the same reasons as stated in para 3. The pointwise findings are as follows:

i) Rebate claim filed in the jurisdictional office whereas in the ARE1, it is mentioned as Raigad Maritime Commissioner: In its revision application, the applicant has stated that the goods had been exported through two ports, Viz. JNPT Nhava Sheva and Air Cargo Sahar and it was not possible to submit one single original claim documents at same time with two different rebate sanctioning authorities and hence though they mentioned Maritime Commissioner, Mumbai-I in their ARE-1, they have filed the same with their jurisdictional A.C/D.C.

Government in this case rely on GOI Order No. 40/2012-CX dated 16.01.2012 in the case of Cipla Limited. The facts of the case were that the goods were exported by the applicant partly by sea and partly by air, thereby attracting the jurisdiction of two different authorities for the purpose of grant of due export benefits. GOI vide the aforesaid Order observed as under:-

> *10. Government, however, takes note of compelling circumstances of the applicant exporter herein due to which he had to follow the instructions off the buyer to split the consignment and send part by Air and part by desired Sea-Port. At times, there are certain exigencies at ground level in competitive business dealings when such odd situation occurs. Government also notes that the applicant has obtained and submitted a "not filed/no claim" certificate dated 21.03.2011 from (initially) mentioned office of the Maritime Commissioner of Central Excise, Raigad to clear the doubt, any misuse or double claim in such particular situation. However, the mandatory requirement, sanctity and importance of applicable provisions of law is always required to be kept in view. Hon'ble Tribunal in case of TAFE Ltd. Vs CCE Chennai reported as 2008(22)ELT80(T-Chennai) has held that sanction of rebate by different authority involves only administrative adjustment of funds disbursed as rebate for statistical purposes and the exercise of sanctioning rebate cannot be allowed to be undertaken again. Government observes that the department should have returned the claim to applicant for filing before Maritime Commissioner, Raigarh before rejecting the same. However applicant has bought 'no claim/not filed' certificate from Maritme Commissioner Raigarh and there cannot be any chance of double payment. In view of above, Government holds that part rebate in respect of goods exported within 6 months of their*

clearance from the factory is admissible and the same may be sanctioned by A.C. Daman."

In this case, Government finds that the applicant has submitted the No objection certificate obtained from Maritime Commissioner, Mumbai-I and Raigad Commissionerate stating that they have neither received nor they have sanctioned the said rebate claim. Hence in view of the same and relying on the aforesaid judgement, Government observes that there is no double Payment in this case and AC/DC Vapi Division can sanction the rebate subject to the verification of the claim.

ii) Triplicate copy of ARE.1 not submitted and duty paid at higher rate than the effective rate:

a) In the revision application the applicant has submitted that in respect of the issue of payment of duty by the manufacturer @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006, Government has decided the matter vide Order No.1568-95/2012 dated 14-11-2012 and that as per the provision of Clause (a) of subsection (6) of Section 142 of CGST,2017 any amount of credit found to be admissible to the claimant shall be refunded to him in cash.

b) While rejecting the rebate claim, Commissioner Appeals held that the sanction of the rebate at effective rate or otherwise becomes irrelevant since the duty payment itself is not verified by the competent authority. Government observes that the applicant has submitted D.C. Vapi Division's letter dated 31-05-2012 addressed to DC Rebate Raigad wherein it is mentioned that the manufacturer had submitted the impugned ARE-1s and it is also mentioned therein that the manufacturer has paid the duty at the higher rate.

c) Government relies on judgments Order No. 1568-95/2012-Cx dated 14-11-12 and Order No 41-54/2013-CX dated 16.01.2013. Order No 41-54/2013-CX dated 16.01.2013 holds as under:

" there is no merit in the contentions of applicant that they are eligible to claim rebate of duty paid @ 10% i.e. General Tariff Rate of Duty ignoring the

effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5% in terms of Notification No. 4/2006-C.E., dated 1-3-2006 as amended. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/2006-C.E. is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the case discussed in Para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in Para 8.8.3 above, the excess paid amount is to be returned/adjusted in Cenvat credit account of assessee. Moreover Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat credit account of the concerned manufacturer".

d) Being aggrieved by the decision of the order of Revision Authority, the Commissioner of Central Excise, Mumbai-III also filed Writ Petition No. 2693/2013 before Hon'ble Bombay High Court. Hon'ble Bombay High Court vide Order dated 17th November 2014 had dismissed the Writ Petition No 2693/2103 filed by the Commissioner of Central Excise Mumbai-III holding that

"The direction to allow the amount to be re-credited in the Cenvat Credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the order in original was modified by the Joint Secretary (Revisional Authority) , what is the material to note is that relief has not been granted in its entirety to the first respondent . The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has made which can be construed as a positive direction or as a command as is now being understood. It was an observation made in the context of the amounts lying in excess. How they are to be dealt with and in what terms and under what provisions of law is a matter which can be looked into by the Government or even by the Commissioner who is before us. That on some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto particularly when that it is in favour of the authority. For all these reasons, the Writ Petition is misconceived and disposed of.

e) In view of the Revisionary Authority Order and Hon'ble Bombay High Court's Order discussed in preceding paras (c) & (d), Government holds that the applicant is entitled to rebate of duty payable at effective rate as per Notification No. 4/2006-C.E. dated 1-3-2006 as amended and the duty paid by the applicant in excess than payable at effective rate as per Notification No. 4/2006-C.E. dated 1-3-2006 as amended has to be re credited in the Cenvat Credit account of the applicant subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944. However, since the applicant in this case is a merchant exporter and does not have a Cenvat credit account, the excess payment cannot be granted as rebate in the form of Cenvat credit.

The applicant has also made some arguments about the fact that with the implementation of GST, allowing re-credit of the excess duty paid was no longer an option and any amount allowable as re-credit of CENVAT credit has to be granted as cash refund in terms of Section 142(3) of the CGST Act, 2017. Be that as it may, Government seeks to emphasise that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the CEA, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The provisions of the CGST Act, 2017 are not exercisable in revision proceedings. Therefore, the relief in this regard cannot be entertained at this stage.

10. In respect of the issue of non-submission of Triplicate copy of ARE1, Government observes that the applicant has contended that their manufacturer had submitted Triplicates to their respective authority, but the same had not been forwarded to rebate section for further process. The rebate has been rejected on the grounds that the triplicate copy of the ARE-1 had not been submitted and that the duty payment particulars have not been verified.

However Government finds that the applicant has submitted the copy of the manufacturer's letter dated 17-05-2012 vide which they have enclosed 184 nos of Triplicate copy of the ARE1s and the same has been

acknowledged as received by the department. Further they have also submitted D.C. Vapi Division's letter dated 31-05-2012 addressed to DC Rebate Raigad wherein it is mentioned that the manufacturer had submitted 184 ARE-1s and that the manufacturer has paid the duty at the higher rate. However the Divisional DC has mentioned that the triplicate copies were not submitted within the stipulated time limit i.e within 24 hours of the removal of goods and hence the same is not signed and endorsed on post facto basis as there is no provision to do the same. Government in this regard relies on GOI Order Nos. 612-666/2011-CX., dated 31-5-2011 in In Re: Vinergy International Pvt. Ltd., and wherein GOI observed as under:

> *"9.9 Regarding certification of duty payment on the goods, Government notes the furnace oil cleared on payment of duty on Central Excise Invoices by M/s. BPCL Refinery Mahul and stored in their own installation BPCL Sewree Terminal whose Central Excise Invoice contain the reference of corresponding Central Excise Invoice issued by BPCL Refinery. The Asstt. Commissioner Central Excise has mentioned that the applicant had received said goods from M/s. BPCL Sewree Terminal and duty of said goods was originally paid by M/s. BPCL (Refinery) Mahul. This factual position as stated in the order-in-original is not denied by the department. Further, M/s. BPCL Mahul has given Disclaimer Certificate in each case to the applicant certifying the duty payment on the said goods and stating that they have no objection to M/s. Vinergy International Pvt. Ltd. claiming Excise refund/rebate of duty paid on furnace oil supplied to foreign going vessels. The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent."*
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> *10. In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that*

the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notification, circular, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Tri), Alfa Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Trl), Atma Tube Products - 1998 (103) E.L.T. 207 (Tri.), Creative Mobus - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

11. In view of above circumstances and keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatibility specifically when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared from M/s. BPCL Sewree Terminal were exported. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant. Thus, the impugned orders-in-appeal are hereby set aside and case is remanded back to the original authority to sanction the rebate claim after verifying the duty deposit particulars as stated in ARE-I forms. A reasonable opportunity of hearing will be afforded to the applicants.

Relying on the aforesaid case as well as on the aforesaid discussions and findings, Government directs the original authority to consider the rebate claims for sanction at the effective rate as per Notification 4/2006

dated 1.03.2006 subject to the verification of the duty deposit particulars as stated in ARE-I forms/Invoices.

17. Accordingly, the Revision Applications is disposed off in the above terms.

Shrawan 30/9/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.238 /2021-CX (WZ)/ASRA/Mumbai DATED 30.09.2021

To

M/s Cipla Limited,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013.

Copy to :

1. The Commissioner of GST & CX, Belapur,
2. The Commissioner of GST & CX (Appeals) Belapur, CGO Complex, 6thFloor, Belapur.
3. The Deputy / Assistant Commissioner of (Rebate), GST & CX Belapur,
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard File.
6. Spare copy.