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SPEED POST



F.No. 198/89-92/2015—R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....

Order No. 255-258/2018-CX dated 01-5-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No.339-342(SLM)CE/JPR/2015 dated 26/05/2015, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur.

Applicant : Principal Commissioner, Central Excise, Alwar

Respondent : M/s Medicamen Biotech Ltd., Bhiwadi

ORDER

A Revision Application No. 198/89-92/2015-R.A. dated 04/09/2015 has been filed by the Principal Commissioner, Central Excise, Alwar (hereinafter referred to as the applicant) against the Order-in-Appeal No. 339-342(SLM)CE/JPR/2015 dated 26/05/2015, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur, whereby the applicant's first appeal has been rejected.

2. The brief facts leading to the present proceeding before the Government are that the respondent M/s Medicamen Biotech Ltd., Bhiwadi, had filed rebate claims for duty of excise paid on exported goods and the same were sanctioned by the original adjudicating authority. Being aggrieved, the department filed appeal against this order before Commissioner (Appeals) and the same was rejected by the Commissioner (Appeals) vide the above said order-in-appeal dated 26/05/2015.

3. The revenue has filed the present revision application mainly on the ground that respondent could not avail CENVAT credit on the inputs procured against Advance Licences, no central excise duty was required to be paid on the goods exported against Advance Licences and accordingly rebate of duty against wrongly paid central excise duty from the wrongly availed CENVAT credit account is not admissible to the respondent.

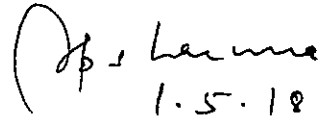
3. A personal hearing was offered on 15/02/2018 which was attended by Sh. Sunil Malhotra, Assistant Commissioner, Division C, Bhiwadi, for the applicant and reiterated the grounds of revision already pleaded in their application. Sh. R. K. Philips, Advocate, appeared on behalf of the respondent and contested the revision application for the reasons given in their reply dated 15/10/2015. He also placed reliance on the CESTAT's

order dated 13/07/2016 in their own case and CBEC's circular dated 16/02/2018 whereby the Hon'ble Rajasthan High Court's decision in the case of M/s Balkrishna Industries has been accepted by the department.

4. The Government has examined the matter and has found that even though the supplier of the goods had option to supply the inputs without payment of duty against advance licences/invalidation letters of the respondent by following the procedure specified under Notification No. 44/2001-CE(NT) dated 26/06/2001, there was no legal compulsion on their part to do so. Notification No. 44/2001-CE (NT) only provide facilities to the exporters to procure duty free inputs etc., but no manufacturer can be forced not to supply the inputs on payment of duty. Notification No. 44/2001 is not even the exemption notification and, therefore, Section 5A (1A) of Central Excise Act, 1944 is not applicable which stipulates that where the duty exemption is given absolutely the manufacturer excisable goods shall not pay the duty of excise on the exempted goods. Above all, whether supplier of the inputs was liable for paying duty or not can be decided only by the jurisdictional authorities of the supplier manufacturer and not by the jurisdictional central excise authorities of the manufacturer-exporter as held by the Hon'ble Supreme Court in the case of CCE & CUS Vs M/s MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)]. Further it is also noted that the present proceeding is regarding admissibility of the rebate of duty to the respondent and not regarding availability of any benefit due to non-compliance of the procedure under Notification No. 44/2001-CE or advance licence etc. The issue regarding rebate of duty is to guide by Rule 18 of Central Excise Rules, 2004 and Notification No. 19/2004 dated 06/09/2004 which primarily provides that the rebate of duty is to be granted in respect of the duty paid exported goods. This fundamental

condition is undisputedly fulfilled in this case and there is no allegation that other conditions envisaged in the above mentioned notification have not been satisfied. This view is strongly supported by Bombay High Court's decision in the case of M/s Oleofine Organics (India) Pvt. Ltd. Vs CCE, Thane [2015 (319) ELT A 192 (Bom)], CESTAT's Order No. A/52301/2016-EX[DB] dated 23/06/2016 in the case of the respondent itself, the Hon'ble Rajasthan High Court's decision in the case of M/s Balakrishna Industries Ltd which has been accepted by CBEC vide Circular No.1063/2/2018-CX dated 16/02/2018 which is squarely applicable to the present case. Considering these facts and the legal position, the revision application filed by the revenue is completely misplaced and is not found maintainable.

7. Accordingly, the revision application is rejected.


1.5.18

(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Excise & Service Tax,
"A" Block, Surya Nagar, Alwar-301 001
G.O.I. Order No. 255-258 /18-Cx dated 1/5-2018

Copy to:-

1. M/s Medicamen Biotech Ltd., SP-1192, A&B, Phase-IV, RIICO Industrial Area, Bhiwadi, Alwar.
2. The Commissioner of Central Excise & Service Tax, Alwar, "A" Block, Surya Nagar, Alwar-301 001
3. Commissioner (Appeals), Customs & Central Excise, Jaipur.
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy


T-5-18

NIRMALA DEVI
(Section officer)
(Revision Application unit)