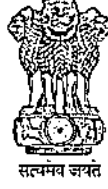


REGISTERED SPEED POST



**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.198/10/2016-RA / 30

Date of Issue:- 27.01.2023

ORDER NO. 25/2023-CEX (WZ) /ASRA/MUMBAI DATED 23.1.2023 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: -** Pr. Commissioner, CGST & Central Excise, Mumbai Central.
- Respondent: -** M/s. Bowmen & Archer Pharma Machines (India) Pvt. Ltd., Panchal Industries, 6/H, Gala No. 5, Bharat Coal Compound, Kurla Kamani, Kurla (W), Mumbai - 400 070.
- Subject: -** Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/768/MII/2014 dated 07.08.2015 passed by the Commissioner Central Excise(Appeals), Mumbai Zone-II.

ORDER

This Revision Application has been filed by Pr. Commissioner, CGST & Central Excise, Mumbai Central (hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/768/MII/2014 dated 07.08.2015 passed by the Commissioner Central Excise(Appeals), Mumbai Zone-II which decided an appeal filed by the respondent against the Order-in-Original No. DSP/Ref/II/Ch-II/14-15 dated 19.09.2014 passed by the original Adjudicating Authority which decided rebate claims filed by the respondent.

2. The brief facts of the case are that M/s. Bowman & Archer Pharma Machines (India) Pvt. Ltd. situated at Panchal Industries, 6/H, Gala No. 5, Bharat Coal Compound, Kurla Kamani, Kurla (W), Mumbai-400 070 (hereinafter referred to as "the respondent") are holding Central Excise Registration No. AAFCB1802REM001, had exported goods under rebate without payment of duty.

3. The respondent had filed application for rebate claim, with jurisdictional officer, against the exported goods as well as for clearance to SEZ under claim of rebate, however, duty was not paid at the time of removal and also respondent had not executed the letter of undertaking with jurisdictional Division of Central Excise. As they had exported the goods without payment of duty and without any valid letter of undertaking or bond, the adjudicating authority rejected their rebate claim, on the grounds of non-payment of duty at the time of export.

4. Being aggrieved, the appellants filed appeal against the rejection of their rebate claim on the grounds that they had applied for UT-1 on 29.04.2013, however on non-receipt of the same, they had re-applied on 22.07.2013 and the same was accepted by the D.C., C.Ex., Chembur -II on 01.08.2013. They were not fully aware of the export procedures and therefore, the goods were dispatched without payment of duty, however, on

realisation of their mistake, they voluntarily paid excise duty Rs. 8,90,562/- alongwith interest Rs. 90,471/- and penalty of Rs. 62,339/- on 27.02.2014.

5. The Commissioner (Appeals) vide Order-in-Appeal No. CD/768/MII/2014 dated 07.08.2015 aside Order-in-Original No. DSP/Ref/II/Ch-II/14-15 dated 19.09.2014 and allowed the appeal with consequential relief.

6. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application mainly on the following grounds:

6.1. Exports were done both under UT -1 and rebate. Goods exported under ARE-1 No. 2/02.07.13 were mentioned as exported under rebate. The duty involved was Rs 8,16,170/-. However, duty liability was not discharged at the time of removal as per conditions prescribed under clause 2 (a) Notification 19/2004-CE. Goods cleared vide ARE No. 3/06.07.14 and No. 4/07.14 were exported under UT-1 without payment of duty. Duty involved for these two exports was Rs. 74,393/-. However, UT-1 submitted by the party was not accepted by the Department at the time of export.

6.2. The Apex Court in the case of M/s. Omkar Overseas Ltd. as reported in 2003 (156) ELT 167 (SC) relied upon by the Commissioner (A) in the present OIA, it has been held that benefit of rebate can be denied only if there is short payment by reason of fraud, collusion or any willful misstatement or suppression of facts on the part of the party who was to pay duty. In the present case, the assessee has cleared the goods under claim of rebate, but failed to discharge the duty liability by paying the duty at the time of export or paying it by the 5th of the next month. The assessee has paid duty after a delay of more than 7 months and explanation given for this lapse is not convincing Therefore, willful misstatement and suppression cannot be ruled out on the part of the assessee. Another distinguishing factor in the present case is that it is a case of delayed payment of duty and not short payment of duty. Since the assessee was availing the benefit of

Notification 19/2004-CE, the onus was on the assessee to fulfill the conditions prescribed under the said notification.

6.3. Board's circular No 418/51/98-CX dated 02.09.1998 clarifies that the rebate will be allowed even in the cases where the manufacturer makes delayed payment of duty. However, the said circular is not specific to export under rebate. It concerns with duty paid under Section 3A of the Central Excise Act, 1944. As the goods were not assessed to duty under Section 3A of Central Excise Act, 1944, the said circular is not squarely applicable in the present case.

6.4. The Hon'ble Delhi High Court order in case of Sandhar Automotives V/s. Joint Secretary GOI 2014 (305) E.L.T. 193 (Del) has held that mandatory conditions for availing rebate cannot be waived on any inequitable consideration. It has further held that payment of interest on delayed payment after the goods have been exported cannot be construed to mean that the condition of payment of duty prior to the export of goods has been complied. The ratio of the said judgement can be squarely made applicable in the present case as the refund claimed for the major portion of the goods claimed is for export under rebate where the duty was not paid at the time of removal. The goods were exported on 02.07.2013 and the duty was paid with interest on 27.02.14 i.e. after more than seven months of export. Therefore conditions prescribed under clause 2(a) of Notification 19/2004-CE were not met.

6.5 The Hon'ble Supreme Court in case of Collector of C Ex, Calcutta Vs. Alnoori Tobacco Products reported in 2004 (170) E.L.T. 135 (S.C.) held in para 13 of the said order that "Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper." In the case relied upon by the Commissioner (A) viz. M/s Omkar Overseas Ltd Vs. Union of India as reported in 2003(156) ELT 167 (SC) is clearly distinguishable on the facts, hence ratio of same cannot be made

applicable to the facts of the present case. However, the ratio of the order passed by Hon'ble Delhi High Court in case of Sandhar Automotives Vs. Joint Secretary GOI 2014 (305) ELT. 193 (Del) is squarely applicable in the present case.

7. Respondent made submissions Ref No. BAPMIPL/GOI-RA/145/16-17 dated 15.06.2016 wherein they stated-

7.1 They had exported goods under rebate without payment of duty. Realising their mistake they later voluntarily paid excise duty Rs.8,90,562/- alongwith interest Rs. 90,471/- and penalty Rs. 62,339/-. In this connection, the Board circular No.418/51/98-CX dt.02/09/1998, at Para 6, states that:

"6. It is emphasized that these notifications provide for rebate of duty only where duty on such clearances have been fully discharged. No rebate fully or partially, should be sanctioned where duty has not been paid or only partially paid for the period in which the goods have been removed from the factory of production. It is, however, clarified that rebate would be allowed even in the cases where a manufacturer makes delayed payment of duty under the provisions of Central Excise Rules, 1944, in respect of period where export goods were cleared."

7.2 The Hon'ble Supreme Court in the case of M/s. Omkar Overseas Ltd. As reported in 2 E.L.T. 167(SC) held as under:

"Export-Rebate-Benefit of rebate is not to be denied because there is short payment. Benefit can be denied only if there is short payment by reason of fraud, collusion or any willful mis-statement or suppression of facts. Once it has been held that there was no fraud, collusion or any willful mis-statement or suppression of facts on the part of the party

who was to pay the duty then the exporter cannot be denied rebate. [para 4]"

They stated that their application for rebate claim was rejected by adjudicating authority on grounds of non-payment of duty at time of export against which they filed an appeal grounds that the Central Excise department had delayed acceptance of their LUT and they had mistakenly delayed their payment.

8. Personal hearing in this case was scheduled on 16.06.2022, 30.06.2022, 26.07.2022 & 28.07.2022. However, neither the applicant nor the respondent appeared for the personal hearing on the appointed dates or make any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

9. Government has carefully gone through the relevant case records available in the case files, the written submission and also perused the said Order-in-Original and the impugned Order-in-Appeal.

10. Government notes that the issue involved in the instant case is whether the rebate of the duty paid belatedly by the respondent on the goods exported without valid 'Letter of Undertaking' can be sanctioned to them. Government finds that the respondent had cleared the goods for export without payment of duty under Rule 19 of the Central Excise Rules, 2002, however on realizing that the LUT was not valid, paid the duty involved along with interest and penalty and claimed the rebate of the duty paid under Rule 18 of the Central Excise Rules, 2002. Government notes that it is not in dispute that the goods in question have been exported, thus, the only issue for decision is whether the payment of duty at a later date can be accepted for sanction of rebate of such duty. Government finds that the respondent has paid the duty in cash along with interest and penalty, hence

there is no loss to the Government exchequer. Government notes that the applicant has requested to reject the subject claims of the respondent on the grounds that they failed to pay duty before clearance of the goods for export and had hence failed to fulfil the statutory condition of Notification No.19/2004-CE (NT) dated 06.09.2004 which required them to do so. The applicant department has also contended that the respondent has paid duty after a delay of more than 7 months, therefore, willful mis statement and suppression cannot be ruled out on the part of the assessee. Government finds these views to be a narrow one and notes that the same is not in consonance with the laid down principle that as far as exports are concerned, substantial benefit should not be denied on the basis of procedural lapses. Government finds that in the present case the duty was paid by the respondent, albeit belatedly, along with appropriate interest and penalty on the goods which have been exported. In such situation, rejecting the rebate claim of the respondent would amount to the Government holding on to the duty paid by the respondent without the authority of law, which is incorrect and not permissible. In view of the above, Government holds that the respondent is eligible to the rebate claimed vide the said claims.

11. Thus, Government does not find any infirmity in the Order-in-Appeal No. CD/768/MII/2014 dated 07.08.2015 passed by the Commissioner Central Excise(Appeals), Mumbai Zone-II, and therefore, upholds the impugned order in appeal.

12. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the respondent with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The respondent is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the respondent to present their case.

13. The Revision Application is dismissed being devoid of merit.

Shrawan
23/01/23
(SHRAWAN KUMAR)

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

ORDER No. 25/2023-CEX (WZ) /ASRA/Mumbai

Dated 23.1.2023

To,

Pr. Commissioner, CGST & Central Excise,
Mumbai Central.

Copy to:

1. M/s. Bowmen & Archer Pharma Machines (India) Pvt. Ltd., Panchal Industries, 6/H, Gala No. 5, Bharat Coal Compound, Kurla Kamani, Kurla (W), Mumbai - 400 070.
2. Commissioner (Appeals), Mumbai Zone-II.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.