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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.198/587-588/2011-RA / 4664 Date of Issue: 01.09.2021

ORDER NO.271-272/2021-CX (SZ)/ASRA/MUMBAI DATED 25.08.2021 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.

Applicants : M/s Shasun Pharmaceuticals Ltd., Cuddalore.

Respondents : Commissioner of Central Excise, Pondicherry

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 32/2005(P) dated 10.05.2005 and 23/2005(P) dated 15.03.2005 passed by the Commissioner of Central Excise (Appeals), Chennai.

ORDER

These two Revision Applications are filed by the M/s Shasun Pharmaceuticals Ltd., (now named M/s Solara Avtive Pharma Sciences Ltd), No. 28, Sardar Patel Road, 3rd & 4th floor, Batra Centre, Guindy, Chennai – 600 031 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. 32/2005(P) dated 10.05.2005 and 23/2005(P) dated 15.03.2005 passed by the Commissioner of Central Excise (Appeals), Chennai.

F.No.198/587/2011-RA

2. The facts of the case are that

(i) The Applicant had exported 750 kgs of Gabapentine under cover of ARE-4 No. 171/2000-01 dated 29.03.2001 with invoice No. EB 1220 dated 20.03.2001 and the same had been exported under claim for Rebate of duty under Rule 18 of the Central Excise Rules, 2002 after executing an Undertaking vide Rule 19 of the Central Excise Rules, 2002. The said consignment had been assigned with Shipping Bill No. 2320913 dated 30.03.2001.

(ii) The said 750 kgs of Gabapentine 500 kgs was returned by their buyer and was re-imported vide Bill of Entry No. 176 dated 04.01.2002 without payment of duty vide Notification No. 158/95-Cus dated 14.11.1995.

(iii) Out of the said returned re-imported material, 500 kgs. of Gabapentine was reprocessed and cleared for export under cover of ARE-1 No. 1/2002-2003 with export invoice No. E001 dated 06.04.2002 on the strength of Undertaking furnished by the Applicant. The export consignment which was loaded in a mini lorry reportedly met with an accident on 08.04.2002 near Killianur between Pondicherry and Tinidvanam and the entire 500 kgs of Gabapentine was reported to have been destroyed by fire caused by the accident.

(iv) The Applicant had also claimed/obtained compensation of Rs. 51,20,500/- from M/s Reliance General Insurance Company towards the cost of 500 kgs of Gabapentine. The Applicant had also undertaken to pay the duty amount on the goods exported, in the even of failure to export the excisable goods vide Undertaking dated 31.07.2001 executed for the purpose of export.

(v) The Applicant was issued Show Cause Notice dated 06.03.2003 by the Superintendent of Central Excise, Range-II, Cuddalore demanding duty of Rs. 8,19,280/- at the rate of 16% Adv. on Rs. 51,20,500/- being the value of 500 kgs. of Gabapentine cleared for export but not exported. After due process of law, the adjudicating authority, the Additional Commissioner of Central Excise, Pondicherry vide Order-in-Original No. 04/2004 dated 31.05.2004 confirmed the duty demand of Rs. 8,19,280/-with interest calculated on the value of 500 kgs. of Gabapentine cleared for export but not exported and subsequently destroyed in fire accident under Section 11A(1) of the Central Excise Act, 1944 read with Undertaking dated 31.07.2001 executed for the purpose of export as provided under Notification No. 42/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2002.

(vi) Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Chennai. The Commissioner(Appeals) vide Order-in-Appeal No. 32/2005(P) dated 10.05.2005 rejected their appeal.

F.No.198/588/2011-RA

3. The facts of the case are that

(i) The Applicant had exported 500 kgs. of Ranitidine HCL valued at Rs. 5,03,469/- on payment of duty of Rs. 80,555/- under claim for rebate of duty under ARE-1 No. 6/2002-2003 dated 10.04.2002 and Shipping Bill No. 03645 dated 11.04.2002. The Applicant was sanctioned rebate of Rs. 80,555/- being the Central Excise duty paid

on the 500 kgs. of Ranitidine HCL exported by the Maritime Commissioner of Central Excise, Chennai vide C. No. IV/16/15/2002-RF dated 31.05.2002.

(ii) Owing to rejection of exported material by their buyer, 500 kgs. of Ranitidine HCL returned to the Applicant which was re-imported vide Bill of Entry No. 011983 dated 31.05.2002 without payment of duty under Notification No. 158/95-Cus dated 14.11.1995.

(iii) The Applicant vide their letter dated 02.07.2002 and 08.07.2002 reported that on 02.07.2003 there was a major fire accident in their factory and the entire quantity of 500 kgs. of Ranitidine HCL in question, stored in their Store Room along with the other materials had been burnt.

(iv) In terms of Rule 18 of the Central Excise Rules, 2002 and Notification No.40/2001-(CE(NT) dated 26.06.2001 only when the goods are exported outside India, the Central Government may grant rebate of duty paid on such excisable goods. Hence, the 500 kgs. of Ranitidine HCL destroyed in the fire accident on 02.07.2002 was to be treated as if not exported and as such the rebate claimed and obtained by the Applicant was not admissible. Accordingly, it appeared that the rebate of duty amounting Rs.80,555/- sanctioned on the 500 kgs. of Ranitidine HCL in question by the Maritime Commissioner and received by the Applicant is liable for recovery from them in terms of the Central Excise Rules, 2002 read with Section 11A(1) of the Central Excise Act. Hence the Applicant was issued Show Cause Notice dated 03.04.2003.

(v) After due process of law, the adjudicating authority, the Deputy Commissioner of Central Excise, Cuddalore vide Order-in-Original No. 3/2004 dated 27.02.2004 confirmed the demand of Rs.80,555/- being the rebate of Central Excise duty paid on the 500 Kgs of impugned goods re-imported without being sold in another country, under 11A(2) of the Central Excise Act, 1944 read with Rule 18 of Central

Excise Rules, 2002 and Notification No.40/2001-CE(NT) dated 26.6.2001 along with interest thereupon.

(vi) Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Chennai. The Commissioner(Appeals) vide Order-in-Appeal No. 23/2005(P) dated 15.03.2005 rejected their appeal.

F.No.198/587-588/2011-RA

4. Being aggrieved by the two Order-in-appeal, the Applicant filed two appeals before CESTAT, South Zonal Bench, Chennai.

(i) The Hon'ble Tribunal vide Stay Order No. 718 & 719/2006 dated 16.06.2006 directed the Applicant to deposit Rs. 4,00,000/- in terms of Section 35F of the Central Excise for the purpose of hearing the two appeals by them. The Applicant was also directed to report compliance of order by 21.07.2006.

(ii) On 21.07.2006, when the case was called, nobody was present representing the Applicant and there was no communication intimating compliance with the order directing redeposit. The Hon'ble Tribunal vide Final Order No. 613 & 614 dated 21.07.2006 dismissed the Applicant's appeals.

(iii) The Applicant then filed E/ROA/40 & 41/06 on the grounds that the Hon'ble Stay Order No. 718 & 719/2006 dated 16.06.2006 was received by the Applicant only on 11.07.2006 and therefore they had time beyond 21.07.2006 for making the deposit. They made the deposit on 24.7.2006 as evidenced by a copy of the relevant TR-6 Challan. As there was proof of compliance with the stay order, the Hon'ble Tribunal vide Order No. 561 & 562/06 dated 01.12.2006 allowed the application and recalled the Final Order 613 & 614 dated 21.07.2006 and restored their appeal to their original numbers.

(iv) The Applicant also filed a Misc. Application No. E/Misc/Application No. 4 & 5/11 for change of the Applicant's name from M/s Shasun Chemicals and Drugs Ltd. to M/s Shasun Pharmaceuticals Ltd.

(v) The Hon'ble Tribunal vide Misc. Order No. 146/11 & 150/11 and Final Order No. 458-459/11 dated 11.03.2011 held that –

> *"MISC application for change in cause title is allowed as the name of the company has changed. The appellant's name, M/s Shasun Chemicals and Drugs Ltd. shall now read as "M/s Shasun Pharmaceuticals Ltd."*
>
> *2. Now, I take up the appeals for hearing, I find that the issue related to rebate of duty of excise on goods exported and the impugned order has been passed by the Commissioner(Appeals) under the provisions of Section 35A of the Central Excise Act, 1944. Therefore, in view of the first proviso to Section 35B, the jurisdiction of the Tribunal is ousted as the proviso stipulates that no appeal shall lie to the appellate Tribunal in respect of any order passed by the Commissioner(Appeals) under Section 35A, if such order relates to rebate of duty of excise on goods exported to any country or territory outside India... The appeals are dismissed as not maintainable before the Tribunal. The papers are returned to the assesses for presentation before the proper forum.*
>
> *3. It shall be open to the revisional authority before whom the application are required to be filed to consider condonation of delay in preferring the revision application, if such applications are filed before him."*

6. The Applicant, on 08.07.2011 filed two Revision Applications along with applications for Condonation of delay (COD) before the Central Government. The Revisionary Authority vide GOI Order No. 230-231.2013-CX dated 07.03.2013 without going into the merits of the case, rejected the revision applications as time barred and not maintainable.

7. Aggrieved, the Applicant filed Writ Petition Nos. 19179 and 19180 of 2013 before the High Court of Madras. The Hon'ble High Court vide Order dated 07.11.2014 held that –

> *"18. In the result, the writ petitions are allowed and the impugned orders are set aside and the delay in filing the revision petitions are condoned subject to the condition that the petitioner deposits a further sum of Rs. 2,50,000/- (Rupees Two Lakhs and Fifity thousand only) before the Deputy Commissioner of Central Excise, No. 1, Vallalar Nagar, Manjakuppam,*

Cuddalore, within a period of four weeks from the date of receipt of a copy of this order along with the payment receipt and the copy of this order. Payment receipt and the copy of this order shall be filed before the first respondent, thereafter, the first respondent shall issue adjudication notice to the petitioner fixing the date of personal hearing and after hearing the petitioner, the first respondent shall consider and dispose of the matter on merits. No costs. Connected MPs are closed."

8. The Applicant filed the two Revision Applications on the following grounds:

(i) The impugned orders passed by the Commissioner(Appeals) are against the facts and circumstances of the cases, provisions of Central Excise Rule 21 and 18 of Central Excise Rules, 2002, and are on presumption without appreciating facts.

F.No.198/587/2011-RA

(ii) The accident had occurred only when the Applicant had cleared the consignment for re-export from their factory after reprocessing the rejected good and fulfilling all the conditions involved therein for such clearance.

(iii) Based on the CBE&C letter No.209/3M/77-CX.6 dated 24.04.77, it is clarified that, in the event of an accidental loss of any goods removed for export in bond occurring between completion of excise (export) formalities and actual shipment, the full circumstances leading to the loss should be reported by the officer accepting the proof of export to the Commissioner of Central Excise concerned for decision who will proceed to deal with such losses under provisions contained in appropriate rule. In view of the above, the contention of the Commissioner of Central Excise that the remission of duty cannot be allowed on goods subsequent to the removal was not correct.

(iv) Further, by discretion of the Commissioner, the remission of duty on goods lost or destroyed by an accident due to a natural cause can be made under the erstwhile Rule 147 of the Central Excise Rules, 1944. In this context, the Applicant relied on the Tribunal's decision in the case of M/s. Kandimalla Raghvaiah Vs.GOI, [1985 (21) ELT 693 (AP)].

(v) Necessary procedures that are required to be followed in case of goods destroyed by fire accident had been fully observed. Excise and various other Government agencies had also investigated the matter. In view of the above, the Applicant had requested the Commissioner of Central Excise, for remission of duty supported by documentary evidences such as survey Insurance Report, copy of FIR etc., who is the appropriate authority for granting remission of duty on Gabapentine - 500 Kgs destroyed by the unavoidable accident.

(vi) Since the discretion is conferred on the Commissioner of Central Excise, it has to be exercised judicially and according to law. Even, the refusal to exercise discretion in favour of the licensee must be based on facts justifying the refusal.

(vii) The Applicant's application for remission was decided by the Supdt. of Central Excise, Cuddalore, vide letter dated 19.04.2002, as rejected, when the power vests with the Commissioner of Central Excise. It exhibits lack of jurisdiction. Supdt. of Central Excise is not the delegated authority to decide on remission applications. Hence, the rejection of their application for remission, by the Supdt., of Central Excise, Cuddalore, was not in accordance with law and the principles of natural justice. If any speaking order had been passed by the Commissioner against them, the Applicant could have challenged the same. Therefore, without deciding our claim for remission of duty in accordance with law, the duty demand in respect of Gabapentine destroyed by fire in transit, could not be legally confirmed. In this context, they relied on the Tribunal's decision in the case of M/s. Hrishikesh Industrial Fabrics Vs. Commissioner of C.Ex. Thane-II, Mumbai, [2004(169) ELT.163 (Tri.-Mumbai)]. Reference may be made to the ratio of law laid down in Rosa Sugar Ltd., Vs. CCE, Lucknow [2001(132) ELT 323] and Triveni Eng.& Industries Ltd., Vs.CCE, Meerut-I [2002 (146) ELT.580] wherein similar view has been taken.

(viii) Further, it has been clarified by the Board vide Circular No.650/41/2002-CX, dated 07.08.2002 that Modvat credit of duty

paid on the inputs contained in finished products on which duty remission has been granted shall be admissible and reversal thereof shall not be necessary. However before granting remission of duty on any finished products destroyed or damaged in fire accident etc. it should be ensured that the insurance amount claimed by the assessee does not include the duty element of the inputs used in the manufacture of said goods taken as credit. The instruction contained under para 2.4 of Chapter 18 of Central Excise Manual shall be modified to this extent.

(ix) In context to the above, the Applicant submitted that the total claim amount sanctioned does not include Central Excise/CVD/Customs and SAD calculated on finished products or raw materials destroyed by fire in the accident. Even otherwise, there are citations of Tribunal that the remission of duty is not deniable merely because the manufacturer has received compensation for lost or destroyed goods whether including excise duty or not. They had furnished a Bank guarantee of Rs. 29,68,409/- towards Customs duty, CVD 16% and SAD 4% proportionately on the quantity received (500 Kgs - Gabapentine). The CVD 16% for which the B.G was given was equal to the amount of Central Excise duty. However, in the event of failure to comply with the conditions of Notification No.158/95 dated 14.11.95, on re-export, the duty furnished in the Bank guarantee above will be enforced [subject to rejection of their application for remission and cancellation of B.G]. Hence, the Applicant would not be required to pay the Central Excise duty on above 500 Kgs of Gabapentine.

(x) Since the Applicant had cleared the subject goods on payment of terminal Excise duty, they were sanctioned rebate by the Maritime Commissioner of Central Excise, Chennai being the Central Excise duty paid on the 500 kgs of Gabapentine exported. In view of the re-imported consignment has been destroyed by fire, the Department has demanded the rebate amount sanctioned with interest.

(xi) As for the entitlement of rebate on goods cleared initially on payment of terminal excise duty, the Applicant submitted that since the whole of the consignment has been exported out of India within the prescribed period, the rebate had been rightly sanctioned by the appropriate authority. However, subsequently when the goods has been rejected and received at Customs, the Applicant had furnished a Bank Guarantee for Customs duty (including CVD 16%) proportionately on the quantity (500 Kgs - Gabapentine) received. Hence, the availment of rebate on the clearance of export made earlier need not be remitted as advised, which is otherwise is a separate transaction by itself.)

(xii) Even otherwise, if the Applicant are not entitled for rebate, to the amount which the Applicant would be remitting towards rebate, they are entitled for availing the credit in their RG 23 A Part-II account, which is equivalent to cash and there would not no revenue loss to the Government.

(xiii) It is well settled by a series of decisions that what is relevant is substantial compliance with the provisions of law as along as a manufacturer has substantially complied with law, the benefit in accordance with the law cannot be denied for non-observation of technical requirement, if any, of procedural nature. Since the fire accident has rendered impossible the performance of the contract entered with M/s. Apotex Inc. Canada, the Applicant had vide their letter dated 06.05.2002, addressed to the Joint Director General of Foreign Trade had requested for redemption of licences after treating the dispatch as fulfillment of Export obligation. The Joint Director General of Foreign Trade, following the procedure as per clause 16 of the FT(D&R) Act,1992 on condonation of such losses in transit, had vide Order-in-Original dated 12.06.2003, dropped the penal proceedings initiated in the SCN datedt. 04.04.03, and also discharged their LUT and BG executed earlier.

(xiv) Similarly, the Applicant had vide their letter dated 14.04.02 had requested the Commissioner of Customs (Air), Chennai, for remission of duty of Customs on the Gabapentine - 500 Kgs destroyed by the accident followed by fire, by cancellation of B.G executed for Rs.7,42,500/- executed for 25% of Customs duty above and the applicant, to be deemed as relieved and discharged from all liability thereunder. Since the discretion has been conferred on the Commissioner of Customs, it has been exercised judicially and our B.G has been cancelled according to law.

(xv) For the purpose of arriving value for purpose of calculation of duty it has been agreed by the Board for acceptance of FOB value of export consignments as assessable value. The value for exports under claim for rebate and for adjustments in the Bond account for export under bond also would be based only on the FOB value. Hence, the demand made by the Range Supdt., Cuddalore, if at all to be raised, should have been on the FOB value of the export i.e. Rs. 45,37,007) and not on the insurance amount i.e. Rs. 51,20,500/- which was calculated on the CIF value + 10%. This additional 10% on the CIF value would tantamount to the valueof packing material and other incidentals which is normally included in all our imports and exports.

(xvi) The Commissioner (Appeals), too had erred in not taking note of the Appellate tribunal decision in the case of Plastikos Packaging Vs. C.C.E., Allahabad [2001 (1280 ELT 386 (T)], while adjoining the Show Cause Notice, which holds that the demand of duty on the goods lost in fire accident cannot be sustained.

(xvii) As regards levy of interest, the terms of the contract had become impossible to perform on account of an event which is beyond the Applicant's control then the penal provisions of the contract cannot be enforced against the Applicant.

(xviii) The Commissioner (Appeals), has failed to properly appreciate the relevance of the case laws cited and there is no finding in this regard.

Thus there is a total non-application of mind. In light of the above, the impugned order as well as the Order-in-Original deserves to be set aside.

(xix) The Applicant prayed that the impugned Order be set aside.

F.No.198/588/2011-RA

(xx) In general, if goods are indigenously manufactured which had been exported earlier, under various export incentive schemes, and when these are re-imported, they would attract the customs duty leviable on like goods imported goods (as the duty is on the act of importation) unless an exemption is issued. The intention behind is that the exporter should not get away with any benefits, which may have been given as an export incentive, and these benefits should be recovered by way of duty. Thus, certain duties have to be paid equivalent to the export incentives etc., on re-importation.

(xxi) When the finished goods were re-imported, the Applicant had furnished a Bank Guarantee of Rs. 3,12,324/- towards Customs duty, CVD 16% and SAD 4% proportionately on the quantity received (500 Kg. - Ranitidine). The CVD 16% for which the Bank Guarantee was given was given as equal to the amount of excise duty claimed towards the rebate demanded. Hence, in the event of failure to comply with the condition of Notification No. 158/95 dated 14.11.1995, on re-export the duty furnished in the Bank Guarantee above will be enforced, which shall be inclusive of CVD Rs. 1,14,308/-, which is equal/more to the amount of rebate received by the Applicant.

(xxii) As could be seen from the above, the recovery of rebate or any other export incentives, if due from the exporter, rests only with the Customs at the time of re-importation and not with the Central Excise at all. The whole of the consignment has been exported out of India within the prescribed period and the rebate has been rightly sanctioned by the Maritime Commissioner of Central Excise (Export claims) Chennai, as per Rule 18 of the Central Excise Rules, 2002,

after verifying all the connected Shipment documents against the export of the subject goods. Hence, they would not be required to pay rebate again before the Central excise as demanded in the Show Cause Notice for remittance, which is other-wise is a separate transaction by itself. Thus, the Commissioner(Appeals) was clearly in error while holding that *"unless the goods are re-exported the rebate granted on the original export cannot be retained by the assessee and requires to be recovered."*

(xxiii) In the impugned order passed by the appellate authority, it has been held that drawback is not available if goods not exported and reproduced the relevant portion of the judgement as extract in the order. The case is more relevant to the Applicant than to the appellate authority. The emphasis relied in the judgement is on the movement of goods outside the territorial waters of India. It is then that an export may be said to have taken place. In the cited case, the cargo was destroyed when the vessel sunk within the territorial waters of India. Therefore, it was concluded there was no export of the said cargo and no duty drawback was extended to the party.

(xxiv) Whereas, in the instant case, the consignment reached the destination of the consignee in abroad, which is otherwise beyond the territorial waters of India and it will come within the ambit of expression "taking out to a place outside India". Hence the export made by the Applicant was in order and complete.

(xxv) The appellate authority had failed to properly appreciate the relevance of the case laws cited and there was no finding in this regard. Thus there is a total non-application of mind. In light of the above, the impugned order as well as the Order-in-Original deserves to be set aside.

(xxvi) The Applicant prayed to set aside the impugned order as prayed for and pass any other order that may be deemed fit and circumstances of the case and thus render justice.

9. The Assistant Commissioner, Central Excise, Cuddalore vide letter dated 13.12.2012 and 20.12.2012 submitted the following:

F.No.198/587/2011-RA

(i) Jurisdiction: This issue was only about demand under Section11(1) of the Central Excise Act, 1944 as the said goods were cleared without payment of duty for export under Letter of Undertaking did not materialize due to accident after removal from the factory. Both the Adjudicating Authority and the 1st Appellate Authority had not demanded the rebate sanction earlier, but only the duty on the goods cleared for export under LUT but not exported. Hence all the submissions made by the Applicant relating to the rebate are rejectable outright and the Application is liable to be rejected on merits

(ii) Remission of Duty : Both the Adjudicating Authority and the 1st Appellate Authority had rejected the claim for remission of duty on the ground that in terms of Rule 21 of Central Excise Rules, 2002 remission of duty on goods destroyed under fire or natural cause is permissible any time before removal from the factory. In the instant case the goods were removed from the factory and met with an accident at a distant place from the factory. Therefore the request of remission was denied vide Order-in-Original No. 4/2004 dated 31.05.2004. Remission of duty is a separate process and before separate forum and whereas the issue here is non payment of duty, hence the action of Superintendent in initiating the show cause notice is justificable. The Applicant's contention that the power to remit duty rests with the Commissioner and that the Superintendent had wrongfully exercised the power and rejected the claim as erroneous, distortion of the facts and attempt to divert the issue in hand.

(iii) Re-import Under Notification No. 158/95-CUS - Furnishing of Bank Guarantee at the time or re-import had not bearing to the present issue of demand of duty on goods not exported which were cleared

without payment of duty under LUT. The Bank Gurantee executed was to fulfill the condition to release the goods without payment of Customs duty at the time or re-importation.

(iv) Dropping of proceedings by DGFT, remission of duty of Customs by Commissioner of Customs(Air), Chennai and cancellation of Bank Gurantee as contendend by the Applicant had no relevance to the issue in hand as the demand was confirmed on the ground that the goods cleared for export under LUT was not exported.

(v) In view of the findings recorded in the Order-in-Original and Order-in-Appeal and also in view of the above submissions, the demand is sustainable with interest and the Revision Application is liable for rejection.

F.No.198/588/2011-RA

(vi) Jurisdiction: This issue was only about demand under Section11(1) of the Central Excise Act, 1944 as the said goods were not exported after re-importation and the rebate sanctioned under Original export extinguishes ab-inito. Therefore, the Application is liable to be dismissed on merits.

(vii) Export under Rebate of Duty: The contention that recovery of rebate or any other export incentives, rests only with the Customs is erroneous inasmuch as the goods originally exported and rebate sanctioned were rejected by the customer and the said goods were re-imported under Notification No. 158/95-Cus, the Customs do not have any jurisdiction to demand the rebate sanctioned by the Maritime Commissioner.

(viii) Re-import under Notification No. 158/95-Cus: Furnishing of Bank Guarantee at the time of re-import has no bearing to the present issue. The Bank Guarantee executed was to fulfill the condition to release goods without payment of Customs duty at the time of re-importation.

(ix) Duty of Remission: The Remission of duty is separate process and before separate forum under Rule 21 of Central Excise Rules, 2002 Accordingly the remission was allowed under Original-in-Original No. 01/2002 dated 02.04.2012 by the Commissioner of Central Excise, Puducherry.

(x) In view of the findings recorded in the Orders-in-Original and Orders-in-Appeal and also in *view* of the above submission, the demand is sustainable with interest and the Revision Applications are liable for rejection.

10. A personal hearing in the case was held on 25.03.2021 and Shri V Ravindran, Advocate appeared online on behalf of the Applicant. He reiterated the submissions already made in the matter and submitted that High Court vide its order dated 07.11.2014 ordered to decide the matter on merits. Board vide Circular issued 28.02.2015 clarified that place of removal of export is port of loading. In view of above position, he requested for remission to be granted. He promised to submit a written submission.

11. The Applicant submitted the written submission on the following grounds:

(i) The following two issues are to be decided in the two Revision Applications:

(A) Remission of duty under Rule 21 of the Central Excise Rules, 2002 and consequential relief-

(a) Whether, the Applicant is entitled to the remission of duty on 500kgs of Gabapentine lost in fire, while in transit;

(b) Whether, the Applicant is entitled to the remission of duty on 500 kgs of Ranitidine HCL lost in fire inside the factory; and

(c) Whether the Applicant is entitled to the consequential relief in the form of return of pre-deposits of Rs

4,00,000/- and Rs. 2,50,000/- paid at the directions of CESTAT and High Court respectively.

(B) Whether the demand of duty/rebate from the Applicant is justified in law.

(a) In these two case, the Applicant had lost their goods, on account of fire accidents, which were unavoidable and beyond their control. Remission of duty on final products under Rule 21 of the Central Excise Rules, 2002, in such facts and circumstances, are required to be granted.

(b) Rule 21 provides that

> *"Where it is shown to the satisfaction of the Principal Commissioner or Commissioner, as the case may be that goods have been lost or destroyed .....by unavoidable accident.....at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing."*

(c) In Circular No. 999/6/2015-CE dated 28.02.2015, the CBEC Board had stated that

> *"6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."*

(d) The Board has reiterated the above instructions in paragraph 4(ii) of a subsequent Circular No. 1065/4/2018-CX dated 08.06.2018 that

"4. Exceptions:

(i) .....
(ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular no. 999/6/2015-CX dated 28.02.2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India."

(ii) Therefore, the authorities have decided the issue erroneously without the benefit of the above Board's instructions. The judgments cited by the Commissioner(Appeals) are not relevant to the case of remission of duty arising in this case and they are clearly distinguishable. While the case first case cited viz UOI Vs Rajindra Dyeing [2005 (180) ELT 433 (SC)] was related to Drawback Rules, the second case viz Hind Nippon Rural Industries [2004 (167) ELT 414 (Tri.Bang)] was without reference to the Board's clarificatory instructions on the matter.

(iv) The Applicant in support of seeking remission of duty cited few case laws :

(a) Indigra Exports Vs CGST [2019 (2) TMI 1295;

(b) Honest Bio-wet Vs CCE [2014 (11) TMI 579 LB = 2014 (310) ELT 526 (Tri. LB)];

(c) Tab India Granites (P) Ltd Vs CCE & ST, Chennai-III [2017 (8) TMI 1161 – Cestat Chennai];

(d) Raltronics India Pvt Ltd Vs Cestat [2017 (354) ELT 324 (All)].

(v) The case laws cited and the ratio held therein when read with the Board's circulars issued in 2015 and 2018, clearly confirm beyond doubt that in so far as goods lost on account of natural cases or unavoidable accidents, either within the factory or in transit (especially for export), the remission of duty is permissible in law.

(vi) The Applicant prayed that their applications be allowed by granting remission of duty and consequential relief (return of pre-deposits).

12. The Applicant vide email dated 13.07.2021 submitted the following additional submission:

F.No.198/587/2011-RA

(i) In respect of Gebapentine, the Applicant submitted a copy of the Superintendent, Central Excise, Cuddalore's letter dated 19.04.2002 wherein the remission sought by the Applicant under Central Excise was rejected.

F.No.198/588/2011-RA

(ii) As far as the remission filed with Customs in the case of Ranitidine, the Applicant had executed a Bond and Bank Guarantee for a value of Rs. 1,57,000/- as per Notification No. 158/95-Cus on a condition of re-export within 6 months. As the goods got lost owing to fire, Customs department was informed by the Applicant and remission was sought. However, the department issued a demand noticed dated 17.06.2005 which was contested.

(ii) The Deputy Commissioner of Customs (Group-II), Chennai vide Order-in-Original No. 4987/2006 dated 21.02.2006 rejected the request of the Applicant for remission of duty and ordered to pay Rs. 1,13,428 towards the CVD and SAD for the goods re-imported under Bill of Entry No. 11983 dated 31.05.2002 along with interest from the date of re-import. Appeal against this Order-in-Original dated 21.02.2006 was dismissed by the Commissioner of Customs(Appeal), Chennai vide Order-in-Appeal No. C.CUS.709/06 dated 15.09.2006.

(iii) Further, appeal to CESTAT, Chennai also was turned down vide Final Order No. 1954/2009 dated 17.12.2009 in appeal C/11/2007 [2009 (12) TMI 780 Cestat Chennai.

(iv) The Applicant paid the amount of Rs. 1,13,428/- was paid vide TR-6 Challan No. 02/2006 dated 21.07.2006

(v) Since the payment that was made included the CVD portion also, the demand made by the Central Excise authorities and confirmed vide Order-in-Appeal No. 23/2005 is wrong and it is double jeopardy.

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

14. There are two revision applications involved in these proceedings.

14.1 In the first case, 750 kgs of Gebapentine was exported by the Applicant under claim of rebate. Thereafter, 500 kgs of the consignment was rejected by the buyer of the goods and hence 500 kgs was re-imported into India by availing the benefit of exemption under Notification No. 158/95-Cus dated 14.11.95. After reprocessing, the 500 kgs of Gebapentine was cleared for export from the factory by the applicant without payment of duty on the strength of undertaking furnished by them for export. The Mini Lorry laden with the consignment of 500 kgs of Gebapentine met with an accident and the entire quantity of Gebapentine was destroyed in the fire caused by the accident. The Department had therefore issued an SCN dated 06.03.2003 for recovery of duty amounting to Rs. 8,19,280/- on the value of the goods cleared after reprocessing for export under LUT but not exported by treating these goods as cleared for home consumption without payment of duty. This demand of Rs. 8,19,280/- has been confirmed alongwith interest by the adjudicating authority and the Commissioner(Appeals) and the applicant is aggrieved by the confirmation thereof. The Applicant had initially filed appeal before CESTAT. The CESTAT had found that it did not have jurisdiction in the matter as it involved rebate and directed the applicant to filed revision application before the Revisionary Authority. The Revisionary Authority had dismissed the revision application as time barred. The Applicant had then gone in writ before the Hon'ble Madras High Court. The Hon'ble High Court has now remanded the matter back to the revisionary authority for decision on merits.

14.2 In the second case, the Applicant had exported 500 kgs of Ranitidine under claim of rebate and had been sanctioned Rs. 80,555/- as rebate. The entire consignment of 500 kgs of Ranitidine was rejected

by the buyer of the applicant and re-imported into India by availing the benefit of exemption under Notification No. 158/95-Cus dated 14.11.95. Thereafter, due to a major fire accident in their factory the entire quantity of 500 kgs of Ranitidine stored in the store room alongwith other materials was reported to have been burnt up in the fire incident. The Department then issued a SCN dated 03.04.2003 for recovery of rebate of Rs. 80,555/- sanctioned to them along with interest. The demand in the SCN was confirmed along with interest by the adjudicating authority and the Commissioner(Appeals). The applicant had initially filed appeal before CESTAT. The CESTAT had found that it did not have jurisdiction in the matter as it involved rebate and directed the applicant to filed revision application before the Revisionary Authority. The Revisionary Authority had dismissed the revision application as time barred. The Applicant had then gone in writ before the Hon'ble Madras High Court. The Hon'ble High Court has now remanded the matter back to the revisionary authority for decision on merits.

15. Government observes that in both cases, the Applicant has claimed to have filed remission applications before both the Central Excise authorities as well as Customs authorities. The Applicant has stated that their remission application before the Central Excise authorities for the loss of 500 kgs of Gebapentine had been rejected by the Superintendent of Central Excise, Cuddalore on 19.04.2002. However, it is observed that the Additional Commissioner of Central Excise, Pondicherry has discussed about the remission of duty on the goods destroyed subsequent to their removal at Para 8 of his Order-in-Original No. 04/2004 dated 31.05.2004. He has then come to the conclusion that the remission of duty cannot be granted as requested by the assessee. Likewise in the case of Ranitidine, para 6.2 of OIO No. 03/2004 dated 27.02.2004 passed by the Deputy Commissioner of Central Excise, Cuddalore which confirmed the recovery of Rs. 80,555/- records that the remission of duty sought by the applicant for the goods lost in fire has been rejected by the Commissioner of Central Excise, Pondicherry vide OIO No. 18/2003 dated 26.11.2003. On the other

hand, the Department has while filing additional submissions/counter reply to the revision application stated that remission has been allowed under OIO No. 01/2012 dated 02.04.2012 passed by the Commissioner of Central Excise, Puducherry. Therefore, the status of applications for remission filed by the Applicant in both these cases is mired in doubt.

16. overnment observes that the issue in the case of 500 kgs of Gebapentine is purely a demand for central excise duty on the basis of the fact that the re-imported goods had not been exported and therefore central excise duty was payable on these goods as cleared for home consumption without payment of duty. The demand has not been raised for recovery of erroneous sanction of rebate. Clearly, there is no element of rebate involved in this case. However, the demand has been raised for recovery of duty payable due to rejection of remission application. In the case of Ranitidine, the Applicant had been issued a demand for recovery of rebate sanctioned to them for export of the goods in the first instance which had subsequently been re-imported into India as the Applicant had failed to re-export them due to loss of these goods in a fire accident.

17. Government observes that in both these cases, the goods have been exported to the buyers in the very first instance. Part consignment of Gebapentine and the entire consignment of Ranitidine were rejected by the respective buyers and returned back. In the meanwhile, rebate claims have been processed and sanctioned. The goods had crossed the Customs frontier and have reached the buyer of the goods in another country. This fact bears out the export of the goods. It was only upon rejection of the goods by the buyer of the goods that the goods were re-imported into India under the auspices of Notification No. 158/95-Cus dated 14.11.95. The very fact that re-import of the goods has been allowed under Notification No. 158/95-Cus dated 14.11.95 signifies that the goods had been exported. The Customs Department and the Central Excise Department are two arms of the same Central Board of Excise & Customs. If the contention of the Department in the impugned cases is accepted, it would be akin to giving with one hand and taking it away with the other hand. It cannot be lost sight of that the

Notification No. 158/95-Cus dated 14.11.95 sets out an elaborate procedure to protect the import duty involved in the goods which have been re-imported. Although the physical character of the goods which have been re-imported remain the same as the goods which had originally been cleared from the factory and exported, the goods which have been re-imported do not conform to the same identity for the purpose of taxation under central excise law. In other words, these goods no longer retain the character of "manufactured goods" but have metamorphosed into "re-imported goods" and both of these cannot be equated. Government is therefore of the view that the admissibility of rebate on the goods which had originally been exported cannot be assailed. Therefore, the demand for recovery of rebate sanctioned to the Applicant on Ranitidine exported and subsequently re-imported into the country and lost in fire accident is unsustainable.

18. Government finds that the demand raised for recovery of duty on Gebapentine as cleared for home consumption is also contentious. There could have been some scope for demand of Central Excise duty if the show cause notices had pointed out processes amounting to manufacture having been carried out on the re-imported goods. However, no such case has been made out by the Department. The entire case for recovery of duty is based on the sole premise that the re-imported goods had not been re-exported. As pointed out hereinbefore, upon re-import of the goods responsibility has been cast upon the Assistant Commissioner of Customs to satisfy himself regarding the identity of the goods. The notification also secures the customs import duty on the re-imported goods by requiring the importer to execute a bond binding themselves to pay an amount equal to the difference between the duty levied at the time of re-import and the duty exempted by the notification on such goods at the time of importation. These duties would include both BCD and the CVD which is equivalent to the excise duties imposed on like goods manufactured in India. It would go without saying that the Customs authorities would have ensured compliance of these conditions at the time of re-import of the goods. Consequently, when the goods have not been re-exported, in the event of failure to pay the customs duty leviable the bond executed by the importer becomes

enforceable for recovery of both the BCD as well as the CVD. The recovery of CVD in such a situation would suffice the purpose of revenue for recovery of rebate which had originally been sanctioned and paid to the applicant. Therefore, the appropriate course of action for the Central Excise authorities in such circumstances would have been to bring the loss of goods due to fire accident to the notice of the concerned Customs authorities. The issue of show cause cum demand notices in such cases has resulted in duality of proceedings where the appropriate remedy was available with the Customs authorities.

19. In the result, Government concludes that the demands raised and confirmed in both these cases cannot be sustained. Government therefore sets aside the Orders-in-Appeal Nos. 32/2005(P) dated 10.05.2005 and 23/2005(P) dated 15.03.2005 passed by the Commissioner of Central Excise (Appeals), Chennai.

20. The Revision Applications filed by the Applicant are allowed.

25/8/21

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

ORDER No. 271-272 /2021-CX (SZ)/ASRA/Mumbai Dated 25.08.2021

To,
M/s Shasun Pharmaceuticals Ltd.,
(Formely known as M/s Shasun Chemicals and Drugs Ltd.),
No. 28, Sardar Patel Road, 3rd & 4th floor,
Batra Centre, Guindy,
Chennai – 600 031

Copy to:

1. The Commissioner of Central Goods & Service Tax, No. 1, Williams Road, Cantonment, Trichy – 620 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.