

198/189/12-RA

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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. 198/189/12-RA/4038

Date of Issue: 26.08.2020

ORDER NO. 300/2020-CX (WZ) /ASRA/MUMBAI DATED 04.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner, Central Excise, Ahmedabad -II.

Respondent : M/s Cadila Health Care Ltd., Ahmedabad.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 107/2012 (Ahd-II) CE/MM/Commr.(A)/Ahd Dated 26.03.2012 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.



ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Ahmedabad-II (hereinafter referred to as the "applicant") against the Order-in-Appeal No. 107/2012 (Ahd-II) CE/MM/ Commr. (A)/Ahd Dated 26.03.2012 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The brief facts of the case is that M/s Cadila Healthcare Ltd.(Merchant Exporter) Zydus Tower, Satellite Cross Road Sarkhej-Gandhinagar, Highway Ahmedabad (respondent) had filed a rebate claim for Rs.97,764/- (Rupees Ninety Seven Thousand Seven Hundred Sixty Four Only) before the Original Authority of Cenvat duty paid on goods falling under Chpater No. 30 of the Central Excise Tariff Act,1985 in respect of Pharmaceuticals product namely, "Rhizin Syrup 60 ml."-cleared under ARE-1 No.18 dated 18.06.2011 for export. The goods exported were manufactured by M/s Sakar Healthcare Pvt Ltd, Ahmedabad (hereinafter referred to as the "Sakar Healthcare"), They were also availing the facility of Cenvat Credit of duty paid on Inputs, Capital Goods as well as Service Tax Credit under Cenvat Credit Rules. 2004. The Central Excise duty was paid by Sakar Healthcare from their Cenvat Credit account. The goods were exported free of cost under DEPB scheme against which no foreign currency received. Therefore, the Original authority had vide Order-in-Original No. 4092/Reb/2011 dated 08.12.2011 sanctioned the rebate claim by way of allowing the Cenvat credit of Rs 97,784/- in RG 23 A Pt II to the manufacturer exporter Sakar Healthcare.

3. Being aggrieved by the said Order in Original, the respondent had filed appeal before the Commissioner (Appeals-I), Central Excise, Ahmedabad who vide Order-In-Appeal No. 107/2012 (Ahd-II)CE/ MM/COMMR.(A)/Ahd dated 26.03.2012 set aside the Order-in-Original No. 4092/Reb/2011dated 08.12.2011 and allowed the appeal filed by the respondent holding that, the respondent had exported total 63660 Nos. of goods namely, "Rhizin Syrup 60 ml." against ARE-1 No.18 dated 18.06.2011 and out of which they had exported only 10660 Nos. free of cost, which is evident from shipping bill No.4176821 dated 20.06.2011 and relevant Bank realization Certificate. The Commissioner (Appeals) therefore observed that the findings of the Original authority was not the fact as only part consignment is exported free of cost and therefore, the respondent is entitled for the cash rebate of the entire amount, as the



manufacturer (Sakar Healthcare) of the goods has given no objection if the rebate is sanctioned to the respondent and rebate sanctioned to the manufacturer by way of allowing it in the Cenvat account is therefore required to be reversed.

4. The Order-In-Appeal No. 107/2012 (Ahd-II)CE/ MM/COMMR.(A)/Ahd dated 26.03.2012 had been examined by the Commissioner, Central Excise, Ahmedabad -II under the provisions of Section 3SEE of the Central Excise Act, 1944 and on finding that the said Order in Appeal is not legal and proper and on being authorized, Deputy Commissioner, Central Excise Division-IV, Ahmedabad-II filed the present Revision Application before the Government mainly on the following grounds:-

4.1 Commissioner (Appeals) in his findings given in the said OIA dated 26.03.2012 has concluded that out of total 63660 Nos. of "Rhizin Syrup 60 ml." exported against ARE1 No. 18 dated 18.06.2011, 10660 Nos. of said goods were exported free of cost and remaining quantity of goods exported (i.e 53000 Nos.), fetched foreign currency This fact is also stated by the said assessee (respondent). However, the Commissioner (Appeals) in his said order further held that the said assessee is entitled for the cash rebate of entire amount, without showing any reason for admissibility of the cash rebate to the extent to 10660 Nos. of goods exported free of cost for which no foreign currency was received. Cash rebate of goods exported free or cost do not fetch any foreign currency is not admissible Therefore, order of the Commissioner (Appeals) to the extent that appellant is entitled for the cash rebate of 10660 Nos. of goods exported free of cost is admissible is not acceptable.

4.2 The Hon'. Tribunal, West Zonal Bench, Mumbai [Court No.1] in their final order No. A/177/2011-WZB/C-IV (SMB), dated 21.04.2011 in appeal No. ST/250/2010 the case of Raymond Ltd. Vs-Commissioner of Central Excise, Mumbai-III reported at 2011 (274) ELT 551 (Tr. Mumbai) while holding that rebate claim not to be entertained mechanically without fulfillment of mandate of statute and dismissing the appeal, held at Para 4 as under:

4th.....
 *Export means movement of goods from India to abroad to earn foreign exchange and such a meaning is to be construed as realization of foreign exchange in sine qua non to get rebate*

Therefore, order of the Commissioner (Appeals) to the extent that cash rebate is admissible for goods exported free of cost is not acceptable.



4.3 In view of the foregoing submissions, the Commissioner (Appeals) has committed an error by holding that M/s. Cadila Healthcare Ltd (Merchant exporter), Zydus Tower, Satellite Cross Road Sarkhej-Gandhinagar, Highway Ahmedabad is entitled for the cash rebate of Cenvat duty paid on 10660 Nos. of goods also which were exported free of cost and did not fetch any foreign currency credit. Hence the Order to that extent is not legal and proper and is required to be set aside.

5. Personal hearing was scheduled in this case on 19.12.2017, 29.01.2018, 10/11.12.2018 and 23.08.2019; however neither the applicant nor its authorized representative appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. The respondent in response to a personal hearing letter dated 13.12.2017 (Scheduled PH on 19.12.2017), vide email dated 18.12.2017 submitted that it was not possible for them to attend the personal hearing fixed on 19.12.2017 and requested to grant them any other date convenient for personal hearing. However, despite three more opportunities of personal hearing offered thereafter, the respondent also failed to appear for the personal hearing on any of the subsequent dates. Hence, Government proceeds to decide the case on merits on the basis of available records. Government observes that there was a delay of 3 days in filing the present revision applications by the applicant. The applicant in its application for condonation of delay submitted that the Revision Application was sent on 03.07.2012; that the due date for filing of Revision Application 08.07.2012; that it appeared that due to postal delay the Revision Application delivered / filed in the Revision Application Unit, New Delhi late by three days. In view of this, the applicant requested for condonation of delay of 3 days arisen in reaching the Revision Application in Revision Application Unit, New Delhi. Since, the applicant filed this revision application 3 days after the initial 90 days period, which falls within condonable limit of 90 days, Government in the interest of justice condones the said delay and proceeds to examine the cases on merits.

6. Government has carefully gone through the relevant case records, the impugned Order-in-Original and Order-in-Appeal. Government observes that the applicant vide present Revision Application has sought to determine whether the Commissioner (Appeals) was right in allowing Cash rebate of goods exported free of cost by the respondent which did not fetch any foreign currency.



7. Government in this regard relies on GOI Order No. 386/2010-CX., dated 23-3-2010 In Re : Ranbaxy Laboratories Ltd. wherein while holding that the exporter who supplied free samples to the overseas buyer was not eligible for rebate of duty, GOI observed that :

6. Government observes that these samples were not meant for sale, so, they did not have any commercial value and no foreign remittances were to be received by the applicant. Government observes that the rebate/drawback etc. are export-oriented schemes to neutralize the effect of the domestic duties on the exported goods to make them competitive in international market to earn more foreign exchange for the country.

7. As in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per records becomes nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

8. Relying on the rationale of the GOI order cited supra, Government holds that the respondent is not entitled to cash rebate in respect of 10660 Nos. of "Rhizin Syrup 60 ml." exported free of cost against ARE1 No. 18 dated 18.06.2011 for which no foreign currency / exchange was received.

9. The impugned Order-in-Appeal, i.e. Order-in-Appeal No. 107/2012 (Ahd-II) CE /MM/Commr.(A)/Ahd Dated 26.03.2012 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad is therefore, modified to above extent.

10. The revision application is disposed of in the above terms.

11. So, ordered.

(SEEMA ARORA)

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

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ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)



The Commissioner of CGST,
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Copy to:

1. M/s Cadila Healthcare Ltd.(Merchant Exporter) Zydus Tower, Satellite Cross Road Sarkhej-Gandhinagar, Highway Ahmedabad, 380 015.
2. The Commissioner CGST (Appeals) Ahmedabad, Central Excise Bhavan, Near Govt. Polytechnic, Ambawadi, Ahmedabad 380015.
3. The Assistant Commissioner CGST, S.G. Highway West Division, 7th Floor, B. D. Patel House, Naranpura, Sardar Patel Colony, Ahmedabad- 380 015.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

