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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. 195/408/13-RA/1985

Date of Issue: 22.11.2018

ORDER NO. 341/2018-C.EX (WZ) / ASRA / Mumbai DATED 16.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Piramal Enterprises Ltd.,

Respondent: Commissioner of Central Excise Raigad
Commissionerate.

Subject :Revision Application filed, under section 35EE of the Central Excise Act, 944 against the Orders-in-Appeal No. US/927/RGD/2012 dated 24.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.



ORDER

This revision application has been filed by M/s. Piramal Enterprises Ltd., (formerly known as M/s Priamal Healthcare Ltd. and hereinafter referred to as "the applicant") against the the Orders-in-Appeal No. US/927/RGD/2012 dated 24.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. Brief facts of the case are that the applicant, exported the goods viz. 'Multiple Micronutrient Powder' (GULAZIK) falling under Chapter 29/30 of Central Excise Tariff Act, 1985 vide ARE-1 No. 29/2011-12 dated 29-42011 and filed claim for rebate of Central Excise duty paid on clearance of goods amounting to Rs.5,98,501/- which had been exported.

3. The department scrutinized the said rebate claim and vide their letter F No. V.18 (MHD)RBT-Misc-2/2012 dated June 2012 pointed that there was a difference between the value indicated in the ARE-1 and shipping bill and also product name mentioned in shipping bill and ARE-1. Vide Order-in-Original No. R/013/12-13/AC (Mahad)/Raigad dt. 09-08-2012 rebate sanctioning authority sanctioned rebate of only Rs.4,27,639/- and rejected an amount of Rs.1,70,862/- holding that rebate on excess value mentioned in the ARE-1 was not eligible.

4. Being aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) wherein the applicant re-iterated the submissions made in the appeal memorandum and requested that the re-credit of the differential amount shall be allowed.

5. Commissioner (Appeals) vide impugned order in appeal no. US/927/RGD/2012 dated 24/12/2012 observed that

"The adjudicating authority has held that the appellants paid excess duty. If part of duty paid on the exported goods is held to be excess paid, they are entitled to claim refund of such excess duty paid and such refund can also be given by credit in Cenvat credit account. Accordingly, in view of Government of India Order Re: Balkrishna Industries Ltd.[2011 (271) E.L.T 148 (G.O.)] the appellants are at liberty to claim refund of the said excess payment and the same can be allowed by way of credit in Cenvat credit account".

In view of the above, the impugned order is upheld and the appeal is rejected.

The observation made above stated that the applicant are entitled to claim the re-credit in their CENVAT credit account whereas the operative part of the order rejected the appeal of the applicant in entirety.



6 Being aggrieved by said order, the applicant has filed the present Revision Application under Section 35EE of the Central Excise Act, 1944 on the following grounds:-

6.1. The excess amount of duty paid should be allowed as re-credit.

They vide their letter dated 26-06-2012 submitted that the difference in the value indicated in the ARE-1 and shipping bill was due to wrong application of the exchange rate of foreign currency. They due to oversight converted the order value in Euro instead of US Dollar thereby increasing the value of goods and consequently the duty amount. However, while preparing the shipping bill by CHA, the correct currency of US Dollar was taken. Therefore they paid excess duty amount. This bona fide mistake was come to know only when the department pointed out the difference in value while scrutinizing the rebate claim. They submit that the excess payment of duty is not intentional and therefore request that the same may be allowed as re-credit. They rely upon the following judgments:

- (a) Evershine Polyplast Pvt. Ltd., 2012 (278) ELT 133 (GOI)
- (b) Panacea Biotech Ltd, 2012 (276) ELT 412 (GOI)
- (c) Reva Electric Car Co P Ltd, 2012 (275) ELT 488 (GOI)
- (d) Ank Seals Pvt Ltd vs Commissioner of Customs, Mumbai, 2007 (208) ELT 572 (Tri. Mum)

6.2 The excess payment of Rs.1,70,862/- is explained below:

- (a) Price per unit US\$ 0.52
- (b) Quantity shipped 180232 units (5406.96 kgs)
- (c) Total Price US\$ 93,720.64 x 44.30 = Rs.41,51,824/-
- (d) Value in ARE-1 Euro 93,720.64 x 62 = Rs.58,10,680/-
- (e) Duty debited on Rs.58,10,680 = Rs.5,98,501/-
- (f) Actual duty payable Rs.4,27,639/-
- (g) Excess duty paid Rs.1,70,862/- [(e) minus (f)]

Copy of notification 24/01 1-Cus (NT) dated 29-3-2011 giving the exchange rate and copy of purchase order are attached as Annexure-7-a) & 7-b) in support of the above calculation. It is to be noted that the Commissioner (Appeal) has found that they had made the above submissions before the lower authority. However, even after making the findings, the Commissioner (Appeal) has



failed to give any observation in respect of the same. They re-iterate their submissions as above and the same shall be considered for deciding the case in hand.

6.3 In the case of M/s Piramal Glass Ltd., where the issue involved was similar to the present case as the goods in that case was also exported upon payment of duty, they were allowed to take the re-credit of the amount in dispute, by the Hon'ble Commissioner (Appeals), Mumbai-III:

6.4 The core aspect in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent export - If this fundamental requirement is satisfied, procedural requirements, if any can be condoned. There are plethora of judgments in support of this view:-

It will be evident from the submission made above that the fact that they paid the duty on the export of goods & said goods have been exported is not disputed by the department. The only error committed by them was incorrect selection of foreign exchange rate. However the said error is technical in nature which shall be condoned in view of submission made above.

6.5 They rely on the following case laws wherein the appellate authorities have held that the procedural lapse shall be condoned if the fundamental requirement of manufacture and payment of duty thereon is met:-

- Cotfab Exports. 2006 (205) E.L.T. 1027 (G.O.I.)
- Muzaffarnagar Pipe Ind. (P) Ltd. 2002 (148) E.L.T. 134 (Tri.-Del.)
- Bajrang Aluminum Ind. Ltd. 2011 (266) E.L.T. 65 (Tri.-Del.)

Tata Motors Ltd. 2006 (197) E.L.T. 233 (Tri.-Kolkata)

Sambandam Spinning Mills 2001(136) E.L.T. 914 (Tri.-Chennai)

In view of the above, it is submitted that re-credit shall be granted on the ground that they have paid excess duty which is outstanding to them representing the difference due to wrong selection of foreign exchange rate.

6. A personal hearing was held in this case and Shri Manoj Chauhan, Chartered Accountant duly authorized by the applicant appeared alongwith Shri Sunilkumar, Manager for hearing and reiterated the submissions filed in the Revision Applications alongwith written briefs and case laws. In view of the same it was pleaded that the Order in Appeal be set aside and their Revision Application be allowed.

Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law.

10. In view of the aforesaid discussion, Government sets aside the Order-in-Appeal passed by the Commissioner (Appeals). Government also holds that the excess paid amount of duty by the applicant which is not held admissible for being rebated under Rule 18 of Central Excise Rules, 2002, is to be allowed as re-credit in the Cenvat credit account from where said duty was initially paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944.

11. The revision application is thus allowed.

12. So, ordered.

Ashok Kumar Mehta
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(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 341 /2018-CX (WZ) /ASRA/Mumbai, DATED 16.10.2018.

To,

M/s. Piramal Healthcare Limited (now Piramal Enterprises Limited),
Additional MIDC Mahad,
District Raigad, Maharashtra .



Copy to:

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Mahad Division, GST & CX, Raigad Commissionerate.
4. Sr.P.S. to AS(RA), Mumbai.
5. Guard file
6. Spare Copy.

ATTESTED

S.R. Hirulkar
22/11/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)