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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.195/58,59,60,61,78/WZ/2018-RA/1957 Date of Issue: 21 .04.2022

ORDER No.353-357/2022-CX (WZ) /ASRA/Mumbai DATED 19 .04.2022 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	:	M/s Sun Pharmaceutical Industries Limited, Plot No.24/2, 25, Phase IV, GIDC Panoli, 394116 Dist.-Bharuch, Gujarat.
Respondent	:	Commissioner of CGST & Central Excise, Vadodara – II Commissionerate, GST Bhavan, Race Course Circle, Vadodara – 390 007.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal no. VAD – EXCUS - 002- APP - 661-665 - 2017-18 dated 28.11.2017 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara.

ORDER

The subject Revision Applications have been filed by M/s Sun Pharmaceuticals Industries Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 28.11.2017 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara, which decided appeals filed by the applicant against five Orders-in-Original passed by the Assistant Commissioner, Central Excise & Customs, Division – III, Ankleshwar, Bharuch which in turn decided five Show Cause Notices issued to the applicant.

2. Brief facts of the case are that the Mumbai office of the respondent had filed rebate claims in respect of goods which were cleared from their factory situated at Bharuch, Gujarat and exported through the Air Cargo Complex, Sahar, Mumbai, under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE (NT) dated 19.06.2004, seeking rebate of the Central Excise duty paid on the said goods. The same were decided by the Maritime Commissioner, Central Excise, Mumbai – I, wherein the rebate to the extent of the FOB value of the goods exported was sanctioned for being disbursed through RTGS and as regards the excess amount of duty paid, the adjudicating authority held that the manufacturer was at liberty to claim refund of the same with the jurisdictional Assistant/Deputy Commissioner for being credited to their Cenvat Account.

3. The applicant accordingly filed applications with the Assistant Commissioner having jurisdiction over their manufacturing unit, where the Central Excise duty was paid in the first place, for such excess amounts to be re-credited to their Cenvat Account. In response to the same, Show Cause Notices were issued to the applicant seeking to reject the applications filed on the grounds that there was no provision in Rule 18 of the Central Excise Rules, 2004 or notification no.19/2004-CE (NT) dated 06.09.2004 for a rebate claim to be fractionally decided by the Maritime Commissioner and also by the jurisdictional Assistant Commissioner. These Show Cause Notices were decided by the original Adjudicating Authority wherein the charges in the Show Cause Notice were upheld and the applications of the applicant for allowing re-credit of the excess duty paid were rejected.

4. Aggrieved, the applicant filed appeals before the Commissioner (Appeals), who relied on Circular no.203/37/96-CX dated 26.04.1996 issued by the Board to hold that in such cases there was no need to reduce the rebate claimed; and since the exporter had not filed appeals against the orders passed by the Maritime Commissioner, the jurisdictional Adjudicating Authority could not sanction the amount of rebate which was rejected by the Maritime Commissioner. The Commissioner (Appeals) also stated that exporter being a merchant exporter, the concept of unjust enrichment would come into the picture. In light of these observations, the Commissioner (Appeals) rejected the appeals filed by the applicant and upheld the Order of the original Adjudicating Authority.

5. Aggrieved, the applicant has filed the present Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) They had complied with the procedure laid down in Rule 18 of the Central Excise Rules, 2002 and the notification no.19/2004-CE (NT) dated 06.09.2004;

(b) There was no dispute regarding the re-credit of the excess amount paid and in the absence of any dispute, the rejection of such re-credit was irrelevant and they could not suffer losses due to lacuna in the statutes;

(c) The re-credit of the excess amounts paid should not be denied merely on the issue of powers of the refund sanctioning authorities; that refund/rebate should not be rejected due to technical issues;

(d) There was no provision in the newly introduced CGST Act, 2017 which allows them to take re-credit of the earlier sanctioned amount and hence the Department should refund the entire amount in cash;

(e) There were a plethora of judgments wherein it was held that an assessee could *Suo Moto* avail credit of such non-sanctioned amounts and cited several judgments in support of their submissions;

(f) The Government could not retain the amount paid by them without authority of law; the amount paid by them which was found to be in excess was required to be refunded to them under Section 11B of the Central Excise Act, 1944; and

(g) In their case itself the GOI, relying on the order of the High Court of Punjab and Haryana in the case of Nahar Industrial Enterprises vs UOI, had held that excess amount paid is to be returned in the manner in which it was paid and since decision of the higher authorities was binding on the

lower authorities, the amount paid in excess should have been refunded to them.

In view of the above the applicant prayed for the impugned Order-in-Appeal to be set aside and that they may be allowed rebate of the full amount.

6. Personal hearing in the matter was granted to the applicant. Ms Mithila Shelar, Advocate, appeared online on 17.12.2021 on behalf of the respondent. She reiterated their earlier submissions and stated that excess duty paid was ordered by the Maritime Commissioner to be re-credited but the jurisdictional authority had not allowed the same on flimsy grounds. She finally requested that their application may be allowed.

7. Government has carefully gone through the relevant case records available, the written and oral submissions and also perused the impugned Orders-in-Original and Order-in-Appeal.

8. Government notes that the genesis of the instant case lies in the Orders passed by the Maritime Commissioner, Central Excise, Mumbai – I, wherein, as found by the original Adjudicating Authority and also the Commissioner (Appeals), the Maritime Commissioner had sanctioned the rebate claimed by the applicant to the extent of the FOB value and had held that the applicant was at liberty to claim the amount paid in excess as re-credit to the Cenvat account with the jurisdictional AC/DC. Before proceeding any further, Government finds that it is pertinent to examine the relevant portion of the Order of the Maritime Commissioner in this case. The relevant findings and the Order dated 01.02.2016, which is identical in the other Orders-in-Original passed by the Maritime Commissioner, is reproduced below:-

> *"8. In view of the above facts, it is clear that:*
>
> *i) The rebate claims were filed within the time limit prescribed under Section 11B of the Central Excise Act, 1944, along with all the required statutory documents.*
>
> *ii) That the goods in question are duty paid in nature and the same have been exported outof India in the stipulated time period.*

iii) In view of the above, as such the Central Excise duty paid on the goods exported against these rebate claims will be Rs. 59,38,392/- instead of Rs. 63,15,723/-, ***the excess paid duty of Rs. 3,77,331/ will be considered as deposits with Govt. and will be required to be refunded in the manner in which it had been paid. Since in the instant case the duty has been paid by debit in the CENVAT CREDIT account, it requires to be paid as credit into the Cenvat Credit account.***

9. Accordingly, I pass the following order.

ORDER

10. I sanction rebate of Rs.59,38,392/- (Rupees Fifty nine lac thirty eight thousand three hundred ninety two only) to M/s. Sun Pharmaceuticals Industries Ltd., under Rule 18 of C-ntral Excise Rules, 2002 read with Section 11 B of Central Excise Act, 1944 to be paid by transfer through RTGS. As regards, the excess amount of Rs.3,77.331/- (Rs. Three lac seventy seven thousand three hundred thirty one only), claimed, the manufacturer is at liberty to claim refund of the same with the jurisdictional Assistant/Deputy Commissioner of Central Excise for credit to their Cenvat Account.

[emphasis supplied]

Government finds that a reading of the above portion of the Order of the Maritime Commissioner indicates that he had clearly held that the excess duty paid will be required to refunded in the manner in which it had been paid and that in the instant case it was paid through the Cenvat credit account and hence it was required to be paid as credit into the Cenvat credit account. In the Order portion later he merely mentioned that the applicant was liberty of claiming the same with the jurisdictional AC/DC. A harmonious reading of the above portion of the Order-in-Original clearly indicates that the claim for rebate filed by the applicant before the Maritime Commissioner was decided by him in toto and he had not left any aspect of the case open for the jurisdictional Assistant Commissioner to decide. Government finds that the jurisdictional Assistant Commissioner erred in interpreting the same to mean that he was supposed to decide on the eligibility of the applicant to take re-credit of the excess duty paid by them on the exported goods. In this case, it is clear that as the Central Excise duty was paid by the manufacturing unit of the applicant which was situated in Bharuch, Gujarat, the Maritime Commissioner, Mumbai, with a view to ensure that the applicant avails re-credit of the correct amount at

their manufacturing unit, had required them to claim the same from the jurisdictional Assistant Commissioner. Government finds that the jurisdictional Assistant Commissioner, in this case, on receipt of the letters from the applicant seeking re-credit of the excess duty, should have merely treated the same as intimations and ensured that the re-credit taken by the applicant was restricted to the amounts specified in the Orders of the Maritime Commissioner. Government finds that the Show Cause Notices issued to the applicant seeking to deny the re-credit was unwarranted, giving rise to needless litigation which has reached this stage.

9. In view of the above, Government finds that the impugned Order-in-Appeal, is not proper and legal inasmuch as it has upheld the view of the original Adjudicating Authority that a portion of the rebate claims filed by the applicant was required to be decided by the jurisdictional Assistant Commissioner. As discussed earlier, this view of the jurisdictional Assistant Commissioner is flawed and hence the impugned Order-in-Appeal deserves to be set aside. Further, Government finds that the issue of unjust enrichment raised by the Commissioner (Appeals) was not raised either by the Show Cause Notices or by the Orders-in-Original deciding the same. This argument put forth by the Commissioner (Appeals) defies logic, as in this case, the manufacturer and the exporter are the same entity, as indicated by the Orders of the Maritime Commissioner, wherein it has been clearly recorded that the applicant as an exporter having their office at Mumbai have exported goods which were cleared from their factory having ECC No.AADCS3124KXM004; which the jurisdictional Assistant Commissioner, in his Orders-in-Original, has confirmed to be the Central Excise Registration number of the applicant as a manufacturer at Bharuch, Gujarat. Thus, Government finds this apprehension expressed by the Commissioner (Appeals) to be baseless and uncalled for and sets aside the same.

10. Further, the argument of the Commissioner (Appeals) that the applicant having not challenged the order of the Maritime Commissioner have lost their right to pursue this case any further is a prejudiced view, as in this case, the Department too has not challenged the said Order and hence the directions therein, as interpreted by the Commissioner (Appeals), have attained finality; in which case the jurisdictional Assistant Commissioner should have followed the same and allowed the applicant to

take re-credit of the excess amount paid by them. Thus, Government finds this view of the Commissioner (Appeals) to be incorrect. Government finds that in such cases, if there is an element of ambiguity, it would be not only be prudent but obligatory on the part of the authorities to not resort to invoking technicalities to deny the legitimate claims of an exporter.

11. In view of the above, Government annuls the impugned Order-in-Appeal and holds that the applicant should be refunded the amount paid by them which was found to be in excess to the tax payable, as determined by the Maritime Commissioner, by either allowing them re-credit of the same in their Cenvat Credit account or in any other manner as provided for by the Central Goods & Service Tax Act, 2017.

Shrawan 19/4/22

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

ORDER No. 353-357/2022-CX (WZ) /ASRA/Mumbai dated 19.04.2022

To,

M/s Sun Pharmaceutical Industries Limited,
Plot No.24/2, 25, Phase IV,
GIDC Panoli, 394116
Dist.-Bharuch, Gujarat.

Copy to:

1. Commissioner of CGST & Central Excise, Vadodara-II, GST Bhavan, Race Course Circle, Vadodara – 390 007.
2. Commissioner (Appeals), GST & Central Excise, Vadodara, GST Bhavan, 1st floor Annex, Race Course Circle, Vadodara – 390 007
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.