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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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F.No. 195/144/WZ/2018-RA

17109

Date of Issue: 28.09.23

ORDER No. 361/2023-CX (WZ) /ASRA/Mumbai DATED 26.9.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Unimark Remedies Ltd.  
Plot No. 41/42, 1<sup>st</sup> Phase,  
GIDC, Vapi.

Respondent : Commissioner CGST & CEx., Daman.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCESA-STR(APP)-AT-86-2017-18 dated 29.05.2018 passed by the Commissioner Central GST, Vadodara-II

## ORDER

This revision applications has been filed by M/s. Unimark Remedies Ltd. Plot No. 41/42, 1<sup>st</sup> Phase, GIDC, Vapi (hereinafter referred to as “applicant” against the Order-in-Appeal No. CCESA-STR(APP)-AT-86-2017-18 dated 29.05.2018 passed by the Commissioner Central GST, Vadodara-II upholding Orders-in-Original No. C.Ex./04/DEM/ADJ/CSM-ADC/VLS/2016-17 dated 18.11.2016 passed by the Additional Commissioner Central Excise, Service Tax, Valsad Commissionerate.

2. The facts, in brief, of the case are that the applicants in the year 2009 filed 31 rebate claims for refund of Rs.62,83,487/- which were rejected vide Order-in-Original No. 1657 to 1686/AC/Reb/Div.Vapi/2011-12 dated 25.10.2011 & No. 2622/AC/Reb/Div.Vapi/2011-12 dated 29.02.2012 as the goods had been exported under advance license scheme and the notification no. 94/2004-Cus dt. 10.09.2004 restricted the use of benefit under Rule 18 of Central Excise Rules, 2002.

3. Aggrieved applicant filed an appeal against this rejection which was also rejected by Comm(A) vide his order-in-appeal No. SRP/113&114/Vapi/2012-13 dt. 01.11.2012.

4. Instead of filing appeal against the order of Comm(A), the Applicants on 12.09.2013 applied for re-credit of duty paid on above goods cleared for export.

Pending decision of the application dt. 12.09.2013, which was also subsequently rejected vide Order-in-Original No. 1137/DC/REB/Div-Vapi/2014-15 dated 09.10.2014, the Applicants Suo-moto availed the credit of Rs. 62,83,487/- on 23.09.2014.

5. Thereafter a show cause notice issued vide F.No. V(Ch29)3-02/Dem/VLD/2015-16 dated 15.09.2015 was issued to the Applicants and the same was adjudicated by the adjudicating authority vide the Order-in-Original No. C.Ex./04/DEM/ADJ/CSM-ADC/VLS/2016-17 dated 18.11.2016 confirming the demand of Rs. 62,83,487/- under Rule 14 of CENVAT Credit Rules, 2004 readwith Section 11A(1) of Central Excise Act, 1944 alongwith interest under Rule 14 of CENVAT Credit Rules, 2004 readwith Section 11AA of the Central Excise Act, 1944. Penalty of Rs 62,83,487/- was also imposed under Rule 15(1) of CENVAT Credit Rules, 2004 readwith Section 11AC(1)(a) of Central Excise Act, 1944.

6. Aggrieved applicant filed an appeal against the order dated 18.11.2016. Commissioner(Appeals) vide Order-in-Appeal No. CCESA-STR(APP)-AT-86-2017-18 dated 29.05.2018 rejected the appeal and upheld the Order.

7. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following main grounds :-

7.1 The Applicants submitted that the impugned order passed by the Commissioner, Central GST & Excise, Vadodara-II is contrary to the following relied upon pronouncements where under it is already held that the amount of excise duty paid for which rebate is not sanctioned is to be treated as deposit with the Government and is to be refund in the manner it was paid either from Cenvat account or by cash.

- 2009 (235) E.L.T. 22 (P&H) Nahar Industrial Enterprises Ltd Vs. UOI
- 2011 (271) E.L.T. 148 (G.O.I.) IN RE: BALKRISHNA INDUSTRIES LTD
- 2012 (275) E.L.T. 488 (G.O.I.) Rewa Electric Car Company Pvt. Ltd.

- 2012 (277) E.L.T. 412 (G.O.I.) Maral Overseas Ltd
- 2012 (281) E.L.T. 735 (G.O.I.) RSWM Ltd.
- 2012 (283) E.L.T. 444(G.O.I.) IN RE : NAHAR INDUSTRIAL ENTERPRISES LTD.
- 2012 (283) E.L.T. 466 (G.O.I.) Flamingo Pharmaceuticals Ltd
- 2012 (284) E.L.T. 737 (G.O.I.) GTN Engineering (India) Ltd.
- 2013 (288) ELT 133 (G.O.I.) Cadila Healthcare Ltd.
- 2013 (292) E.L.T. 140 (G.O.I.)Waves Foods Pvt. Ltd.

7.2 The Applicants submitted that the impugned order passed by the Commissioner, Central GST & Excise, Vadodara-II is contrary to the decision of Revisionary Authority in case of Balkrishna Industries where under the Jt. Secretary categorically held that the exporter is not required to make a request with the department for allowing re-credit in the Cenvat account and can take the Suo-motto credit.

7.3 That the impugned order passed by the Commissioner, Central GST & Excise, Vadodara-II also is contrary to the relied upon pronouncements of Hon'ble Madras High Court in case of ICMC Corporation Ltd, 2014 (302) ELT 45 (Madras) where under the Hon'ble Madras High Court has also held that filing of refund claim under Section 11B is not required for taking re-credit in Cenvat account.

7.4 The Applicants submitted that the Revisionary Authority in case of Hindustan Zinc Ltd, 214 (313) ELT 854 (GOI) held that the amount paid in excess of duty liability on exportation of goods is to be treated as voluntarily deposit to be re-credited in cenvat account.

7.5 The Applicants submitted that in addition to the pronouncements referred above it is also held in various following pronouncements that the Suo-motu credit is permissible in cases involving mere adjustments/double payments/where enrichments are not applicable.

- 2006 (194) E.L.T. 458 (Tri. - Del.) ANAPURNA MALLEABLES Pvt. LTD V/S.COMMISSIONER OF C. EX., JAIPUR
- 2010 (249) E.L.T. 225 (Tri. - Ahmd.) ESDEE PAINTS LTD V/S. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD
- 2008(231) E.L.T.154(Tri-Ahmd) LARK WIRES & INFOTECH LTD V/S.COMMR. OF C. EX. & cus.I VADODARA-II
- 2010(251)E.L.T. 387 (Tri.-Del) COMMISSIONER OF C. EX., MEERUT-1 V/S. UNITECH MACHINES LTD.
- 2010(254)E.L.T. 349 (Tri.-Mumbai) COMMISSIONER OF C. EX., MUMBAI-III V/S. CEAT LTD.
- 2010(261)E.L.T. 696 (Tri.-Bang.)ULTRA TECH CEMENT LTD V/S.COMMISSIONER OF C. EX., TIRUPATI
- 2010 (262) E.L.T. 639 (Tri. - Kolkata) INDIAN OIL CORPORATION LTD V/S. COMMISSIONER OF C. EX., HALDIA
- 2011(268) E.L.T.497(Tri-Ahmd) S. SUBRAHMANYAN & CO V/S. COMMISSIONER OF C. EX., VADODARA
- 2011 (271) E.L.T. 349 (Chhattisgarh) UNION OF INDIA V/S. ANNAPURNA MALLEABLES Pvt. LTD.
- 2012 (280) E.L.T, 528 (Tri. - Ahmd.) NEPTUNE INDUSTRIES LTD V/S. COMM. OF C. EX., AHMEDABAD
- 2013 (291) E.L.T. 70 (Tri. - Ahmd.) SOPARIWALAEXPORTS Pvt. LTD V/S. COMMISSIONER OF C. EX., VADODARA-I
- 2013 (298) E.L.T. 260 (Tri. - Ahmd.) BAYER CROP SCIENCE LTD V/S. COMMISSIONER OF CENTRAL EXCISE, SURAT-II

- 2014 (302) E.L.T. 433 (Tri. - Ahmd.) STI INDUSTRIES V/S. COMMISSIONER OF CENTRAL EXCISE, DAMAN
- 2015 (322) E.L.T. 728 (Tri. - Del.) IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI PUSHP ENTERPRISES V/S. COMMISSIONER OF CENTRAL EXCISE, JAIPUR-I
- 2015 (329) E.L.T. 912 (Tri. - Mumbai) NOCIL V/S. COMMISSIONER OF C. EX., BELAPUR
- 2016 (331) E.L.T. 391 (All.) KRISHNAV ENGINEERING LTD V/S. CESTAT
- 2016 (339) E.L.T. 278 (Tri. - Chan.) HARI NARAIN INDUSTRIES V/S. COMMR. OF C. EX. & S.T., Jammu & KASHMIR
- 2017(357)E.L.T. 1215 (Tri. Bang.) TOTAL ENVIRONMENT WOODWORK P. LTD V/S. C.C.E., C. & S.T., BANGALORE-I
- 2018 (8) G.S.T.L. 231 (Raj.) UNION OF INDIA V/S. J.K. LAXMI CEMENT LTD.

7.6 They submitted that the Commissioner, Central GST & Excise, Vadodara-II, illegally relied upon the judgment of Hon'ble High Court of Rajasthan in case of Vivid Marbles Pvt. Ltd, 2008 (223) ELT 576 (RAJ) in para 7.1 of Impugned order in support of the contention that the refund claim was required to be filed under Section 11B. They submitted that the facts involved in the above case pertains to demand of excise duty recovered by the department on excisable goods cleared and to be refunded where the Hon'ble High Court correctly observed that such refund will be subject to provisions of Section 11B. The said pronouncement has no connectivity with case of Applicants on hand. Further in the said para the Commissioner, Central GST & Excise, Vadodara-II also relied upon the judgment of Hon'ble Gujarat High Court in case of Indo-Nippon Chemicals Company Ltd, 2005 (185) ELT 19 (GUJ) for the said purpose has also no relevance and on the contrary in the said judgment it is held at para 36

that the provisions of unjust enrichment is not applicable in exportation of goods as there is no passing of duty burden. The reliance placed on the judgment of Hon'ble Supreme Court in case of Mafatlal Industries Ltd is also not relevant as admittedly it is already held in the various above pronouncements that there is no need to follow the refund provisions of Section 11B wherever scrutiny of the provisions of unjust enrichments is not warranted.

7.7 The Applicants submitted that the Commissioner, Central GST & Excise, Vadodara-II failed to appreciate that the observation of Addl. Commissioner, Central Excise, in para No. 12.2.1.5 in OIO that Applicants did not file appeal against OIA dated 01.11.2012 is totally irrelevant. The Applicants decided not the press of cash refund of rebate amount and therefore did not file appeal. However, the credit was always permissible even without filing appeal and therefore it has no relevance with the disputed issue.

7.8 The Commissioner, Central GST & Excise, Vadodara-II also failed to appreciate that it was wrongly held by the adjudicating authority that the suo-motto credit availed by the Applicants was time barred under Section 11B. It is submitted that the Suo-motto credit is not under the provision of Section 11B and therefore the question of time limit prescribed under Section 11B does not apply to such suo-motto credit.

8. Personal hearing was fixed on 09.11.2022, 22.11.2022, 13.12.2022, 10.01.2023, 10.02.2023 & 17.02.2023. Personal hearing was held on 17.02.2023, Mr. Shivcharan Lal Meena, Asst. Commissioner appeared online on behalf of the respondent department and reiterated earlier submissions. He requested to maintain Commissioner(Appeals) Order. The applicant did not appear for personal hearing 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 takes up the Revision Application against the Order-in-Appeal No. CCESA-STR(APP)-AT-86-2017-18 dated 29.05.2018 which decided an appeal against the Orders-in-Original No. C.Ex./04/DEM/ADJ/CSM-ADC/VLS/2016-17 dated 18.11.2016 passed by the Additional Commissioner Central Excise, Service Tax, Valsad Commissionerate. The facts of the case have been detailed above.

10. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. From the facts on record, the issues to be decided in the present case is whether Suo-motto credit could have been availed by the applicant without contesting the Order-in-Appeal No. SRP/113&114/Vapi/2012-13 dated 01.11.2012.

11. Government observes that Commissioner(Appeals) had vide Order-in-Appeal No. SRP/113&114/Vapi/2012-13 dated 01.11.2012 rejected the appeal filed by the applicant(para 3 supra). The Applicant has not filed appeal against the order dated 01.11.2012 and it has remained unchallenged. Applicant has neither clarified this issue in revision application nor have they appeared for personal hearing afforded to them to clarify the issue. In absence of Revision Application being filed, order-in-appeal No. SRP/113&114/Vapi/2012-13 dt. 01.11.2012 has achieved finality.



12. Hon'ble Supreme Court in case of Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC) has observed that –

**If an appealable order is passed but the assessee decides not to file appeal, the party cannot later find fault with the adjudication order while claiming refund**

13. Government observes that the applicant has raised several grounds in the grounds for revision which are not relevant in the instant case. The applicant has also relied on various case laws. However, since order-in-appeal No. SRP/113&114/Vapi/2012-13 dt. 01.11.2012, was accepted by the applicant it has attained finality. Therefore, there is no necessity to delve into these contentions individually.

14. Government finds that the revision application is non est, devoid of merits and is hereby rejected.

*Shrawan*  
*26/9/23*  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 36\ /2023-CX (WZ) /ASRA/Mumbai Dated: 26.9.23

To,  
M/s. Unimark Remedies Ltd.  
Plot No. 41/42, 1<sup>st</sup> Phase,  
GIDC, Vapi – 396191.

Copy to:

1. Commissioner CGST & CEx., Daman, GST Bhavan, RCP Compound, Vapi-396191.
2. Commissioner Central GST, Vadodara-II, Central CGST Building, Shubhanpura, Vadodara -390023.

3. D.H.Mehta, Advocate, Shop No. 4, Vivek Enclave, Mandapeshwar Road, Shivaji Nagar, Borivali(W), Mumbai - 400103.
4. Sr. P.S. to AS (RA), Mumbai.
5. Spare Copy.