REGISTERED SPEED POST AD

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. 198/366-393/WZ/2018-RA /1574 Date of Issue: 05.05.2022

ORDER NO.369-396 /2022-CX(WZ)/ASRA/MUMBAI DATED 29.04.2022 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 : Commissioner of CGST & Central Excise, Mumbai East

Respondent : M/s IPCA Laboratories Ltd.
Kandivali, Mumbai – 400 067

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PK/837 to 864/ME/2018 dated 06.09.2018 passed by the Commissioner of Central Excise(Appeals-II), Mumbai.

ORDER

These revision applications have been filed by the Commissioner of CGST & Central Excise, Mumbai East (hereinafter referred to as "the applicant" or "the Department") against Orders-in-Appeal No. PK/837 to 864/ME/2018 dated 06.09.2018 passed by the Commissioner of Central Excise(Appeals-II), Mumbai in respect of M/s M/s IPCA Laboratories Ltd., Kandivali, Mumbai – 400 067(hereinafter referred to as "the respondent").

2. The respondent had filed several rebate claims before the Maritime Commissioner, Mumbai East under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944. The rebate sanctioning authority sanctioned the claims upto FOB value declared by the respondent as rebate. The refund sanctioning authority found that in the light of Section 142(3) of the CGST Act, 2017 the excess amount of duty arose as FOB value of exported goods was less than the invoice value of exported goods paid by the respondent was eligible for refund in cash. The Maritime Commissioner had passed 28 OIO's in such manner.

3. The Department filed appeal against all 28 OIO's before the Commissioner(Appeals) on the grounds that the rebate sanctioning authority had erred in sanctioning rebate over and above the duty on FOB value declared by them and the said excess amount sanctioned may be treated as rejected and lapsed as per the first proviso to Section 142(3) of the CGST Act, 2017.

4. On taking up the appeals for decision, the Commissioner(Appeals) observed that the Department had requested for withdrawal of appeals against 27 OIO's except the appeal against OIO No. R-254/MTC/ME/2017-18 dated 02.11.2017 as the 27 appeals were below the threshold monetary limits fixed by the Board's Instruction issued vide F. No. 390/Misc/116/2017-JC dated 25.05.2018. He therefore allowed the withdrawal of appeals and proceeded to decide the appeal against OIO dated 02.11.2017. After examining Section 142 of the CGST Act, 2017, the

Commissioner(Appeals) opined that the Department had wrongly placed reliance upon Section 142(3) of the CGST Act, 2017 whereas Section 142(4) of the CGST Act, 2017 was correctly applicable to the case. Reliance was also placed upon para 10.1 of Circular No. 37/11/2018-GST dated 15.03.2018. The Commissioner(Appeals) concluded that the respondent was eligible for refund in cash of the excess duty paid by them and therefore upheld the order of the adjudicating authority vide his OIA No. PK/837 to 864/ME/2018 dated 06.09.2018.

5. The Principal Commissioner of CGST & Central Excise, Mumbai East found that the OIA No. PK/837 to 864/ME/2018 dated 06.09.2018 was not legal and proper and therefore directed filing of revision application. The ground for seeking revision was that the rebate sanctioning authority had erred in sanctioning rebate over and above the duty on FOB value declared by them and the said excess amount sanctioned was to be treated as rejected and lapsed as per the first proviso to Section 142(3) of the CGST Act, 2017 which states that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected is to lapse. It was averred that the rebate sanctioning authority had erred in holding that the exporter was eligible for the entire rebate of central excise duty even on the value over and above the FOB value of the goods exported under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, issued under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944 and the provisions of Section 142(3) of the CGST Act, 2017 when the exporter is not eligible for the excess rebate claimed over and above the FOB value declared by them. The Department was of the view that the transitional provision of Section 142(3) of the CGST Act, 2017 had been wrongly interpreted. It was contended that when an Act is implemented in the legislature, proviso if any, incorporated should also be read with and examined with the Act itself and the eligibility should be determined on the basis of the said main Act as well as the proviso and the section cannot be implemented independently. The exporter was eligible for the rebate of duty paid on FOB value and hence

was to be restricted to that extent rather than sanctioning the excess amount claimed by the exporter.

6. Personal hearings were granted in the matter on 26.10.2021 and 02.11.2021. The applicant Department was also requested to furnish copies of the OIO. However, no one appeared for personal hearing and also did not file copies of the OIO as required under Rule 9 of the Central Excise(Appeals) Rules, 2001. Shri L. P. Sanadhya, Sr. General Manager of the respondent appeared online on behalf of the respondent. He reiterated that the impugned order was correct and that the same should be maintained.

7. Government has carefully gone through the impugned OIA, the grounds for revision and the submissions made by the respondent at the time of personal hearing. The issue involved in the present case is whether the rebate sanctioning authority has correctly sanctioned rebate by allowing the duty paid in excess of the central excise duty payable on FOB value of exported goods in cash in terms of Section 142(3) of the CGST Act, 2017 or whether such excess duty paid should lapse as refund of CENVAT credit fully or partially rejected as contended by the Department in the grounds for revision in terms of the first proviso to Section 142(3) of the CGST Act, 2017.

8. It is observed from the impugned OIA, that the relevant OIO has been passed after the introduction of GST. However, the copy of OIO has not been appended to the revision application filed by the Department. The OIA reveals that the rebate sanctioning authority has sanctioned rebate to the extent of central excise duty paid on the exported goods. However, an excess amount of duty had been paid as the FOB value of the exported goods was less than the invoiced value of the exported goods. For this portion of the excess duty paid, the rebate sanctioning authority has adverted to Section 142(3) of the CGST Act, 2017 and allowed refund in cash. It is clear that the adjudicating authority has allowed ***refund*** of the excess duty paid in terms of Section 142(3) of the CGST Act, 2014 and has not rebated it as central excise duty paid on the exported goods.

9. The grounds for revision filed by the applicant Department are entirely based on the premise that the first proviso to Section 142(3) of the CGST Act, 2017 stipulates that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected should lapse. In this regard, Government notes that the impugned claim is a *rebate claim* filed for refund of central excise duty paid on exported goods by the respondent in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the CER, 2002 and Section 11B of the CEA, 1944. The claim filed by the applicant therefore cannot be termed to be a claim for refund of CENVAT credit.

10. Government has consistently held that the excess duty paid on exported goods is not rebatable and such amount is to be refunded in the form in which it was paid into the government account. If the excess duty has been paid from the CENVAT account, such amount was being allowed as re-credit in the CENVAT account. However, with the introduction of Goods and Services Tax Act, CENVAT credit account has become obsolete. It is observed that the grounds for revision are solely restricted to the question of whether the first proviso to Section 142(3) of the CGST Act, 2017 would be applicable to excess duty paid and refunded in cash. This ground would require interpretation of the provisions of Section 142 of the CGST Act, 2017. The revisionary powers exercised by the Central Government in these proceedings are in terms of Section 35EE of the Central Excise Act, 1944 and within the framework of the Central Excise Act, 1944.

11. The relief sought by the Department through these revision applications can be obtained only from authorities empowered under the CGST Act, 2017. The revision applications filed by the Department are therefore dismissed as non-maintainable.

Shrawan 29/4/22

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

ORDER No. 369 - 396 /2022-CX(WZ) /ASRA/Mumbai DATED 29.4.2022

To,
M/s IPCA Laboratories Ltd.
Kandivali, Mumbai – 400 067

Copy to:

1) The Commissioner of CGST & Central Excise, Mumbai East
2) The Commissioner of Central Excise(Appeals-II), Mumbai
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file