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F.No.198/457/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..17/05/13

ORDER NO. 390/2013-CX DATED 17/05/2013 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI D P SINGH, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE
ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the order-in-appeal
No. 17/CE/Appeal/CHD-I/2011 dated 19.4.11 passed
by the Commissioner of Central Excise & Customs
(Appeals) Chandigarh-I

Applicant : Commissioner of Central Excise, Chandigarh-II

Respondent : M/s Ind-Swift Laboratories Ltd., Derabassi (Mohali)

ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Chandigarh-II against the order-in-appeal No. 17/CE/Appeal/CHD-I/2011 dated 19.4.11 passed by the Commissioner of Central Excise & Customs (Appeals) Chandigarh-I with respect to order-in-original No.R-1985/DC/DB/2009 dated 17.11.09 passed by Deputy Commissioner of Central Excise, Derabassi Division.

2. Briefly stated facts of this case are that the respondents M/s Ind-Swift Laboratories Ltd., Derabassi are registered with the department for manufacture of bulk Drug falling under Chapter 29 of Central Excise Tariff Act, 1985. They are availing Cenvat credit on Inputs and Capital Goods under the Cenvat Credit Rules, 2002 and also exporting their final products under claim for rebate. They have filed a rebate claim for Rs.3,54,338/- under Rule 18 of the Central Excise Rules, 2002 for the goods "Clarithromycin Granules (Suspension Grade) 33%" exported against ARE-I No. 17/2008-09 dated 28.04.08 to Mexico after debiting duty amounting to Rs. 3,54,338/- including Education cess against invoice No. E-017 dated 28.04.08 from their cenvat account vide RG-23A Part-II Entry No. 71 dated 28.04.08. On perusal of the export documents submitted by the respondents, it has been observed that the goods were cleared from the factory on 28.04.08 but these have been exported on 23.02.09 vide Flight No.BA-3450 dated 23.02.09 under Shipping Bill No. 3609295 dated 19.02.09 i.e. after the expiry of six months. The respondents have not produced any permission from the competent authority for the extension or time limit beyond six month for export of these goods. It has been alleged that that the respondents have exported their goods after the expiry of six months from the date of clearance of goods without obtaining any permission from the competent authority and they

have not fulfilled the condition imposed under para (2)(b) of Notification No.19/2004-CE(NT) dated 06.09.04. Accordingly, Show Cause Notice dated 19.5.09 was issued to the respondents for rejection of rebate claim of Rs.3,54,338/- filed under Section 11 B of Central Excise Act, 1944. After due process of law the claim was rejected.

3. Being aggrieved with the order-in-original, respondents filed appeal before Commissioner (Appeals), who set aside the impugned order-in-original and allowed the appeal.

4. Being aggrieved with the impugned order-in-appeal, the applicant department has filed this revision application under Section 35EE of the Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The para 2 (b) of the Notification No. 19/2004-CE (NT) dated 06.9.04 clearly stipulates that, the goods should be exported within six months from the date of clearance of goods from factory. It is clear that the party by not exporting the goods within six months from the date of clearance has clearly violated the relevant notification for export of goods under rebate.

4.2 Further, the party can also request the Commissioner for extension of time limits if the conditions/circumstances so wanted. But, the party did not consider any need for that also and instead exported the goods after lapse a period of about 4 months from the last date for effecting export under the said notification No. 19/2004-CE (NT) dated 06.09.2004.

4.3 The reason for not effecting export by the party within the stipulated period of six months is not sound. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the

payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment.

4.4 The Commissioner (Appeals) has great erred allowing the appeal of party relying upon the judgment of Hon'ble Tribunal in the case of Chamundra Pharma Machinery Pvt Ltd Vs. CCE, Ahmedabad-I as the facts of this cases are entirely different from the facts of the instant case. In the case of M/s Chamundra Pharma Machinery Pvt. Ltd, export of goods could not be made on account of political unrest and strikes in Nepal but in the instant case, it is due to willingness of the party.

4.5 The Commissioner (Appeals) has erred in submitting that the case of UOI Vs M/s Dharmendra Textile Processors 2008-TIOL-SC-CX-LB is irrelevant in the instant case. In the said case, the Hon'ble Supreme Court stated that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. In the instant case, the party has clearly violated the conditions {(i.e. 2 (b)} for claiming rebate in respect of duty paid goods exported and further, they did not sought permission from the Commissioner for extension of time and withheld the consignment on its volition. Thus, the provision/conditions of notification must be read without any support, addition or subtraction of words not contained therein when it is clear and plain. The relevant extract is produced here:-

"It is a well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or

substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford V. Spooner, the court cannot aid the legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up deficiencies which are let there".

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act 1944 to file their counter reply. No such reply is filed till date by the respondents.
6. Personal hearing scheduled in the case on 9.10.12, 6.12.12 and 20.2.13. Nobody attended hearing from either side on the given dates. The applicant department vide its letter dated 8.10.12 reiterated the grounds of revision application.
7. Government has carefully gone through the relevant case records, and perused the impugned Order-in-Original and Order-in-Appeal.
8. On perusal of records Government observes that the original authority has rejected the rebate claim as the respondents had neither exported the goods within the period of six months from the date of clearance from the factory premises nor have produced any permission from the competent authority for extension of such time limit. Commissioner (Appeals) observed that the substantive right of respondents cannot be denied merely for not applying for extension of time for export beyond the period of six months when the goods had been already exported. He accordingly set aside the impugned order-in-original and allowed the appeal. Now the applicant department has filed this revision application on the grounds stated at para (4) above.

9. Government notes that the condition no. 2(b) of the Notification No. 19/2004-CE(ND dated 06.09.04 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow":

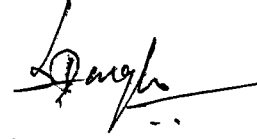
As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.

10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-CE(NT) dated 6.09.04. The respondents have categorically admitted that goods were exported after six month time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-CE (NT) dated 6.9.04. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/04-CE (NT) is not

complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned order-in-original.

11. Revision application succeeds in terms of above.

12. So ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

Commissioner of Central Excise,
Chandigarh-II,
Plot No. 19, Sector-17-C,
Chandigarh.

Attested



प्र. क. रामेश्वरम्/P K. RAMESHWARAM
विशेष कार्य अधिकारी/ASD-II (RA)
वित्त संचालन, (सूचना विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 390/2013-Cx dated 17/05/2013

Copy to

1. M/s Ind-Swift Laboratories Ltd., Village Bhagwanpura, Barwala Road, Derabassi, Distt. Mohali, Punjab
2. Commissioner (Appeals) Customs & Central Excise, Chandigarh-I, Central Revenue Building, Plot No. 19, Sector-17-C, Chandigarh.
3. Deputy Commissioner of Central Excise Division Derabassi, Sadashiv Complex, Ambala-Chandigarh Road, Derabassi.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(P.K.Rameshwaram)
OSD (RA)