

REGISTERED 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. 198/14(I&II)/2016-RA / 824

Date of Issue: 09.02.2023

ORDER NO. 40-A/2023-CX (WZ) / ASRA / Mumbai DATED 07-2-2023  
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 : Principal Commissioner of Central Excise, Raigad.

Respondent : M/s. Sanofi India Limited,  
Sanofi House, CTS No. 117-B,  
L & T Business Park,  
Saki Vihar Road,  
Powai, Mumbai - 400 072.

Subject: Revision Application filed, under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No. CD/715 &  
716/RGD/2015 dated 19.10.2015 passed by the Commissioner (Appeals),  
Central Excise, Mumbai -II

## ORDER

This revision application is filed by Principal Commissioner of Central Excise, Raigad(hereinafter referred to as 'the applicant') against the Order-in-Appeal No. CD/715 & 716/RGD/2015 dated 19.10.2015 passed by Commissioner (Appeals), Central Excise, Mumbai -II

2. The brief facts of the case are that the respondent M/s. Sanofi India Limited, Sanofi House, CTS No. 117-B, L & T Business Park, Saki Vihar Road, Powai, Mumbai - 400 072 manufacturers and exporters of bulk drugs and medicaments falling under Chapter 29, 30 & 90 of the First Schedule to Central Excise Tariff Act, 1985. They exported goods on payment of duty and filed rebate claims for the duty paid on the goods exporter under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Deputy Commissioner (Rebate), Maritime Commissionerate, Central Excise, Raigad, sanctioned the rebate claims vide Orders in Original No. 2449/2014-15 dated 27.11.2014 and No. 2646/2014-15 dated 10.12.2014.

3. Being aggrieved, Revenue filed appeal before Commissioner(Appeals) against the Orders in Original dated 10.12.2014. Commissioner (Appeals) vide impugned Order-in-Appeal No. CD/715 & 716/Rgd/2015 dated 19.10.2015 while disposing the appeal has observed that:-

- (i) In the ARE-1 the respondent has shown the chapter classification of the said product under Chapter Heading No. 90330000 of CETA, 1985 and in the Shipping Bill the product is classified under Chapter Heading No. 90183100 of CETA, 1985. As regards rate of duty both the chapter heading attract tariff rate of 12% Basic Excise Duty. However, Sr. No. 310 of Notification No. 12/2012 CE dated 17.03.2012 provides for exemption in excess of 6% to all goods falling under CETH 9018. Considering this fact it appears that the respondent should have availed the exemption under Notification No. 12/2012 CE dated 17.03 2012 and was required to

pay at the rate of 6% instead of 12% classifying the said product under Chapter sub-heading no. 90183100 as classified in the Shipping Bill.

- (ii) The said goods were exempted unconditionally under Notification No. 12/2012-CE dated 17.03.2012. The respondent has no option but to pay duty @ 6% only instead of 12%. Excess rebate amount which was sanctioned above 6% should be recovered.
- (iii) Appellate authority relied upon the case of M/s. JVS Exports as reported in 2014 (312) E.L.T. 877 (GOI).

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application mainly on the following grounds:

- i. M/s. Sanofi India Ltd. filed rebate claim of Rs. 87,77,918/- under Rebate Claim No.'s 12530, 12531, 12532, 14160 & 14504 and rebate claim of Rs. 15,63,471/- under Rebate Claim No's 13278 & 13279 dated 15.09.2014. While the rebate claim under dispute is Rebate claim No. 13279 dated 15.09.2014 amounting Rs. 9,00,567/- & Rebate claim No.'s 12530, 12531 & 12532 dated 01.09.2014 amounting Rs. 58,64,861/-.
- ii. That the item under dispute is "All star Reusable Insulin Pen" falls under the chapter sub-heading no. 90183100 and not under 90330000. As per Sr. No. 309 of Notification No. 12/2012-CE dated 17.03.2012, parts and accessories of goods of heading 9018 and 9019 and 9022 falling under these headings attract "NIL" rate of duty.
- iii. Section 5A(1A) of CEA 1944 states that-

*"where an exemption in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods".*

- iv.* Hence, there is unconditional exemption and it is mandatory on the part of the assessee to avail the same as per the provision of Section 5A (1A) of CEA, 1944.
- v.* Whereas Commissioner (Appeals) ordered as per Sr. No. 310 of Notification No. 12/2012-CE dated 17.03.2012 which provides for exemption in excess of 6% to all goods falling under CETH 9018.
- vi.* They contended that the Commissioner (Appeals) failed to observe the revenue's stand regarding Sr. No. 309 of Notification No. 12/2012-CE dated 17.03.2012, items "parts and accessories of goods" of heading 9018 and 9019 and 9022 are falling under these headings attract "NIL" rate of duty".

Taking into consideration the facts / grounds as stated above, they requested to modify the impugned Order-In-Appeal No. CD/715 & 716/RGD/2015 dated 19.10.2015 and pass the order considering the fact that the manufacturer shall be mandatorily required to avail the exemption Notification No. 12/2012-CE dated 17.03.2012 at Sr. No. 309, as it is an unconditional exemption for the whole of Central Excise Duty.

5. The applicant was thereafter granted opportunity of personal hearing on 14.06.2022, 28.06.2022, 19.07.2022 or 26.07.2022. Neither the applicant nor the respondent appeared for personal hearing or made 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.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observes that this case involves the two issues of admissibility of rebate claim as well as the issue whether the impugned item viz. "All Star Reusable Insulin Pen" is a complete device falling under heading 90330000 or it is a part of Insulin Delivery Device classifiable under 90183100 as per Note 2 to Chapter 90 of the Central Excise Tariff Act, 1985, as parts. Government finds it proper to first examine the issue of jurisdiction.

8. Government observes that this authority vide its earlier Order No. 1719-1741/2012-CX dated 10-12.12.2012 in this case had specifically mentioned at para 10.3 that issue of classification does not fall under category of cases specified in first proviso to Section 35B (i) of Central Excise Act, 1944 and the appeal / application on said issue cannot be preferred before Joint Secretary (Revision Application) in terms of Section 35EE of Central Excise Act, 1944 and as such revision application on this issue is not maintainable before this authority.

9. Government observes that where the Order-in-Appeal relates to rebate of duty of excise on goods exported or on excisable materials used in the manufacture of goods which are exported, then revision application lies before Central Government in terms of Section 35EE. Government notes that in this case there is no dispute with regard to export of goods and compliance of provisions of Rule 18 of Central Excise Rules, 2002 r/w Notification No. 19/2004-C.E.(N.T.), dated 6-9-2004. The conditions and procedure stipulated in Notification No. 19/2004-C.E. (N.T.) stands fully complied with and export of duty paid goods is also established. So, there is no violation of any statutory provisions relating to rebate claim as far as

Rule 18 of Central Excise Rules, 2002 r/w Not. No. 19/2004-C.E. (N.T.), dated 6-9-2004 is concerned. The dispute is whether the exported goods "All Star Reusable Insulin Pen" is a complete device falling under heading 90330000 or part of Insulin Delivery Device classifiable under 90183100 as per Note 2 to Chapter 90 of the Central Excise Tariff Act, 1985. The Commissioner (Appeals) in the instant case has held that the product is classifiable under Chapter Heading No. 90183100 and as Sr. No. 310 of Notification No. 12/2012-CE dated 17.03.2012 provides for exemption in excess of 6% to all goods falling under CETH 9018 instead of 12%. He further observed that the said finished goods were exempted unconditionally under Notification No. 12/2012-CE dated 17.03.2012 and the respondent had no option but to pay duty @ 6% only instead of 12% in terms of provision of Section 5A (1A) of the Central Excise Act, 1944.

10. Hon'ble Tribunal, Delhi's Order in the case of CCE, Rohtak Vs Jindal Stainless Ltd. (reported in 2012 (285) ELT 118 (Tri. Del), wherein, upon difference of opinion between Member (Judicial) and Member (Technical) of the Hon'ble Tribunal the matter was referred to third Member (Technical) nominated vide provisions of Section 129C(5) to hear the point of differences in this matter and to decide :-

*"Where a matter involves two issues and the statute provides appeals to two different authorities, each having authority to decide only one of the issues, is the argument that only one appeal will lie against one order correct in law;*

On the aforesaid point of difference referred by the Bench the Hon'ble Member (Technical) nominated by Hon'ble President CESTAT, observed as under :-

30. ...., the main dispute in this case is over the admissibility of export rebate under Rule 18 in respect of export of Ice buckets and Waste baskets. The issue of export rebate depends upon the issue of classification. In terms of first proviso to Section 35B(1), the

*Tribunal has no jurisdiction over the appeals against the orders passed by Commissioner (Appeals) in the matters relating to rebate of duty of excise on the goods exported to any country or territory outside India or of rebate on excisable material used in the manufacture of goods which are exported to any country or territory outside India. Under Section 35EE where the order is of nature referred to first proviso to Section 35B(1), a revision application lies before the Central Government. In my view, in this case the main dispute is dispute over admissibility of export rebate as the Asst. Commissioner's order was in respect of rebate claim filed by the Respondent. Even if for the decision on the question of rebate any issue relating to classification is to be decided, that would not change the forum of appeal. Only in a situation where the Commissioner (Appeals) in the same order decides two issues one issue relating to export rebate and other issue relating to classification/valuation or Cenvat credit and the two issues are totally independent issues, the order of the Commissioner (Appeals) can be treated as two orders one in respect of export rebate and the other in respect of classification or valuation or Cenvat credit and only in such a case different portions of the order can be challenged before different authorities. But in a situation where the main issue is export rebate covered by first proviso to Section 35B(1) and if for deciding the issue relating to export rebate, some other issues have also to be decided, the Tribunal would not have jurisdiction and that order of Commissioner (Appeals) can be challenged only before the Jt. Secretary (RA) by filing a revision application.*

10.1 Relying on the aforesaid case, similar stand has been taken by the nominated third Member (Technical) of Tribunal- Delhi in the case of Avanti Overseas Pvt. Ltd. Vs CCE, New Delhi [2018 (363) E.L.T. 969 (Tri. - Del.)] wherein the Hon'ble third Member observed that :-

*29. The decision by the Three Members Bench is to be considered on par with a Larger Bench Decision and is a binding precedent. Applying the ratio of the above case to the current one, I note that in the present case, to decide the issue of eligibility of drawback, it is necessary to first decide the issue of the status of the appellant - whether they are a 100% EOU or not. The two issues are not totally independent issues. The issue of status of the appellant has to be resolved in order to decide the fundamental issue of entitlement of drawback to the appellant. The pith and substance of the dispute in the appeal is about payment of drawback. Consequentially, I am of the view that the present case will fall within the category of orders against which the appellate*

*jurisdiction of the Tribunal is barred. The order of the Commissioner (Appeals) can be challenged only before the Revisionary Authority of Government of India by filing a Revisionary Application.*

Relying on the aforesaid case laws, the Government observes that as the Order-in-Appeal relates to rebate of duty of excise on goods exported, therefore the instant revision application involving rebate and issue of classification would also lie before this authority. Government, therefore, proceeds to decide the Revision Application on merits.

11. Government proceeds to discuss relevant statutory provisions.

11.1 Chapter Sub-heading No. 9018 31 00 of the Central Excise Tariff Act, 1985 the relevant portion reads:

“-----  
   - *Syringes, needles, catheters, cannulae and the like:*  
 9018 31 00 -- Syringes, with or without needles  
 -----”

11.2 Chapter Sub-heading No. 9033 00 00 of the Central Excise Tariff Act, 1985 the relevant portion reads:

“-----

9033 00 00                   PARTS AND ACCESSORIES (NOT SPECIFIED OR INCLUDED  
   ELSEWHERE IN THIS CHAPTER) FOR MACHINES, APPLIANCES,  
   INSTRUMENTS OR APPARATUS OF CHAPTER 90”

11.3 Government observed that the item under dispute is “All Star Reusable Insulin Pen” is a reusable Insulin Pen without needle. The same can be put to use by attaching a needle for administering pre-determined dosage of insulin. The needle is an integral and essential part of the device. Therefore, the re-useable insulin pen would be covered in Chapter Sub-heading No. 90183100 and not under Chapter Sub-heading No. 90330000.



12. In view of above circumstances, Government rejects the Revision Application filed by the department and upholds the impugned Order-in-Appeal No. CD/715 & 716/RGD/2015 dated 19.10.2015.

13. The Revision application is disposed off in the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. ~~Ho~~ -H1 /2023-CX (WZ) /ASRA/Mumbai

Dated 07.2.2023

To,

Principal Commissioner of CGST & CX,  
Raigad.

Copy to :-

1. M/s. Sanofi India Limited, Sanofi House, CTS No. 117-B, L & T Business Park, Saki Vihar Road, Powai, Mumbai - 400 072.
2. Commissioner (Appeals), Central Excise, Mumbai -II.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.