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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. 198/153-166/WZ/2018 / 1012 Date of issue: 12.05.2022

ORDER NO. 403-446/2022-CX (WZ)/ASRA/MUMBAI DATED 10.5.2022
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 : Pr. Commissioner of CGST & Central Excise, Mumbai East
Respondent : M/s. Lupin Limited
Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
PK/427-440/ME/2018 dated 28.05.2018 passed by
Commissioner, CGST and Central Excise, Appeals-II,
Mumbai.

ORDER

This Revision Application is filed by Pr. Commissioner of CGST & Central Excise, Mumbai East, 9th Floor, Lotus Info Centre, Station Road, Parel (East), Mumbai – 400 012 (hereinafter referred to as “the Applicant”) against Order-in-Appeal No. PK/427-440/ME/2018 dated 28.05.2018 passed by Commissioner, CGST and Central Excise, Appeals-II, Mumbai.

2.1 Brief facts of the case are that M/s. Lupin Limited, 3rd Floor, Kalpataru Inspire, Santacruz(E), Mumbai – 400 055 (hereinafter referred to as “the Respondent”) had filed the rebate claims under Notification No. 19/2004 dated 06.09.04 read with Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act, 1944. The refund sanctioning authority found the rebate claims in order but observed that FOB value of exported goods was less than its invoice value, hence excess duty had been paid. However, in the light of Section 142 (3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”), the rebate sanctioning authority sanctioned the refund of said excess paid amount in cash to the respondent vide following Orders-in-Original:

S. No.	OIO No./date	No. of Rebate Claims	Amount sanctioned (in Rs.)	Excess amount paid in cash (in Rs.)
1	R-394/MTC.ME/2017-18 dt.07/12/2017	4	4099822	32656
2	R-395/MTC.ME/2017-18 dt.12/12/2017	14	2636090	22565
3	R-396/MTC.ME/2017-18 dt.12/12/2017	12	1088783	52357
4	R-397/MTC.ME/2017-18 dt.12/12/2017	12	1257247	14099
5	R-398/MTC.ME/2017-18 dt.12/12/2017	14	2297855	145449
6	R-399/MTC.ME/2017-18 dt.08/12/2017	13	2862079	85657
7	R-400/MTC.ME/2017-18 dt.08/12/2017	13	3800135	34231
8	R-401/MTC.ME/2017-18 dt.08/12/2017	9	1390975	50051
9	R-402/MTC.ME/2017-18 dt.08/12/2017	16	2291717	53482
10	R-403/MTC.ME/2017-18 dt.08/12/2017	18	2884092	82894
11	R-404/MTC.ME/2017-18 dt.08/12/2017	16	1919582	87098
12	R-403/MTC.ME/2017-18 dt.08/12/2017	14	3062698	47484
13	R-403/MTC.ME/2017-18 dt.08/12/2017	19	3615396	214946
14	R-424/MTC.ME/2017-18 dt.07/12/2017	11	20111002	81556
		TOTAL	53317473	10,04,525/-

2.2 Aggrieved, the applicant filed an appeal against the impugned 14 orders-in-original on the grounds that the rebate sanctioning authority had erred in sanctioning rebate over and above the duty on FOB value declared by the respondent and the said excess rebate totally amounting to Rs. 10,04,525/- sanctioned may be treated as rejected and lapsed as per the first proviso to Section 142(3) of the Central Goods and Services Tax Act, 2017 which states in explicit terms that "*provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse.*" However, the Commissioner (Appeals) rejected the appeal vide impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) M/s. Lupin Laboratories Ltd. had filed 185 rebate claims totally amounting to Rs.5,33,17,473/- and the entire amount was sanctioned as rebate to them in cash. In review it is observed that the claimant was not entitled for an excess amount of Rs.10,04,525/- sanctioned as rebate over and above the duty on FOB value declared by them and the same was liable to be rejected and lapsed. As per Section 142(3) of the Central Goods and Services Tax Act, 2017, *every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act 1944 (1 of 1944); and as per 1st proviso to Section 142(3) of the Central Goods and Services Tax Act, 2017 'where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse'.*

(b) In view of the above, the excess amount claimed/rejected shall lapse. Accordingly, the amount of refund claimed over and above the FOB value is liable to be rejected, and the same has to be lapsed in terms of the proviso to Section 142(3) *ibid*. The refund sanctioning authority has erred in holding that the exporter was eligible for the entire rebate of Central Excise duty paid even on a value over and above the FOB value on the goods exported under Notification No.19/2004 C.E.(N.T.) dated 06.09.04 and provisions of Section 142(3) of the Central Goods and Services Tax Act, 2017 when the exporter was not eligible for the excess rebate claimed over and above the FOB value declared by them. For this matter, the Transitional Provision of Section 142(3) of the Central Goods and Services Tax Act, 2017 has been wrongly interpreted. 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.

(c) In the instant rebate claim the exporter was eligible for the rebate of duty paid on value and the same had to be restricted to that extent rather than sanctioning the FOB amount claimed by the exporter.

4. Personal hearing in the case was fixed for 28.10.2021. Shri Rohit Bajaj, General Manager (Indirect Tax), attended the online hearing and submitted that Commissioner (Appeals) has granted rebate of full duty as refund on Cenvat would also get encashed under section 142(3) of the CGST Act. He requested to maintain the order of Commissioner (Appeals).

4.1 No representative from Applicant's side appeared nor any written communication has been received from them in the matter.

5. Government has carefully gone through the relevant case records, oral & written submissions available in the case file.

6. Government observes that the issue involved is whether the refund of excess duty paid in view Section 142(3) of the CGST Act is appropriate as per the law?

7.1 Government observes that Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be followed for claiming as well as sanctioning rebate claims of goods exported. Para 2 of said Notification stipulates certain conditions and limitations to be fulfilled before rebate is granted. It is well settled that rebate is to be sanctioned on duty paid on FOB value which corresponds to transaction value of goods being exported. The Government observes that the rebate sanctioning authority had therefore rightly restricted the rebate amount.

7.2 Government observes that as per Notification No. 19/2004-CE(NT) dated 06.09.2004, rebate of the whole of the duty paid on goods exported is to be granted. Here whole duty of excise would mean duty payable under Central Excise Act, 1944. Any amount paid in excess of duty liability cannot be treated as central excise duty. But it has to be treated as voluntary deposit with the Government which is to be returned in the manner in which it was paid. Hon'ble Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI [2009(235) ELT 22(P&H)], has held that:

Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate.

Thus, the Hon'ble Court has observed that refund in cash of higher duty paid on goods exported is not admissible and that refund of same by way of Cenvat credit is appropriate. However, in the instant case, the rebate sanctioning authority could not have allowed re-credit of excess duty paid as GST era had begun and Cenvat Credit account was no longer in existence. Therefore, he rightly resorted to transitional provisions provided in the CGST Act and Appellate authority has affirmed this action.

7.3 Government observes that section 142 of the CGST Act is in respect of 'Miscellaneous transitional provisions' and its sub-section 3 reads as under:

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

The applicant has contended that the amount of refund claimed over and above the FOB Value is liable to be rejected, and the same has to be lapsed in terms of the proviso to Section 142(3) *ibid*. Government partially agrees with this contention, in as much as the rebate of amount claimed over and above the FOB value is liable to be rejected, however, the same is to be treated as deposit with the department and hence is required to be returned to the respondent. Government finds that the proviso relied upon by the applicant would be applicable in that situation where the claim is in respect of refund of Cenvat credit unlike in the instant case where the claim is in respect of refund of central excise duty paid on export goods.

8. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. PK/427-440/ME/2018 dated 29.05.2018 passed by Commissioner, CGST and Central Excise, Appeals-II, Mumbai.

9. The Revision Application is disposed of on the above terms.

Shrawan
10/5/22

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

ORDER No. 403-416 /2022-CX (WZ)/ASRA/Mumbai dated 10.5.2022

To,

M/s. Lupin Limited,
3rd Floor, Kalpataru Inspire,
Off Western Express Highway,
Santacruz(E), Mumbai - 400 055.

Copy to:

1. Pr. Commissioner of CGST & Central Excise,
Mumbai East, 9th Floor, Lotus Info Centre,
Station Road, Parel (East), Mumbai - 400 012.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.