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. 195/1654/12-RA / 5463 Date of Issue: 18.09.2020

ORDER NO. 448/2020-CX (WZ) /ASRA/MUMBAI DATED 16.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT.SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant	:	M/s Meditab Specialities Pvt. Ltd., 12, Gunbow Street, Fort, Mumbai – 400 001.
Respondent	:	The Commissioner, CGST & Central Excise, Mumbai –I.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. BR/46 to 325/MI/2012 dated 14.09.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-I.

ORDER

This revision application has been filed by M/s Meditab Specialities Pvt. Ltd., Mumbai (hereinafter referred to as "the applicant") against Order In Appeal No. BR/46 to 325/MI/2012 dated 14.09.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai-I. (hereinafter referred to as "the respondent")..

2.1 The applicant, a merchant exporter, filed a rebate claim totally amounting to Rs. 38,024/- (Rupees Thirty Eight Thousand Twenty Four Only) under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 for the goods cleared for export from various factories through Air Cargo Complex, Sahar, Mumbai.

2.2 It appears from the rebate claims that the applicant had exported the product 'Medicaments' falling under Chapter 30.04 of the CETA, 1985 on payment of duty of excise at tariff rate i.e. @ 10.30 % adv. Under Notification No. 02/2008-CE dated 01.03.2008 as amended and claimed the duty paid thereof. However, it was found that the Notification No. 2/2008-CE dated 01.03.2008 as amended is a Notification where by the Tariff rate has been amended and it is not the Notification prescribing the effective rate. The effective rate for Chapter 30 was 5.15 % under Notification No. 4/2006-CE dated 01.03.20016 as amended which was not been rescinded till that time. Therefore, the applicant did not appear to be eligible for rebate of excise duty paid on exported products in excess of duty payable on the said products.

2.3 Therefore, show cause notices were issued to the applicant calling upon them to show cause as to why the rebate claims should

not be restricted to the effective rate of duty @ 5.15% i.e. Rs. 19,012/- (Rupees Nineteen Thousand Twelve Only) and the excess rebate claimed amounting Rs. 19,012/- (Rupees Nineteen Thousand Twelve Only) should not be treated as deposit under sub-section (2) of Section 11B of the Central Excise Act, 1944. The Maritime Commissioner (Rebate), Central Excise, Mumbai-I adjudicated the show cause notices and sanctioned the amount paid @ 5.15% adv. as rebate and allowed the remaining amount as refund under Section 11B of the CEA, 1944 in the manner in which it was paid; by way of credit in their CENVAT credit account.

3. Aggrieved by the orders-in-original, the applicant filed appeal before the Commissioner (Appeals), Central Excise, Mumbai-I the ground that :

3.1 The Notification No. 4/2006 & 2/2008 co-exist in the books of law and are not mutually exclusive.

3.2 They are entitled for entire refund of duty paid on goods exported.

3.3 Rebate sanctioning authority cannot question the assessment.

3.4 Assessment of goods being finalized, refund of duty cannot be denied.

3.5 They requested that the orders-in-original be set aside to that extent and directions be issued for sanction of the full rebate claimed instead of re-credit thereof in their CENVAT account.

4. The Appellate Authority vide Order In Appeal No. BR/46 to 325/MI/2012 dated 14.09.2012 upheld that the orders-in-original

restricting the rebate claims to the extent of duty paid @ 5.15% under Notification No. 04/2006-CE dated 01.03.2006 He places reliance on the case law of M/s Nahar Industrial Enterprises Ltd. Vs. UOI 2009(235)ELT 0022 (P&H) and Reva Electric Car Company Pvt. Ltd. 2012(275)ELT 0488 (GOI). The Appellate Authority upheld the orders-in-original

5. Aggrieved by the impugned Order in Appeal, the applicant filed instant Revision Application on the similar grounds as discussed in para 3 (Supra). The applicant had also relied upon various case laws in support of their claim.

6. A Personal hearing was granted in the matter on 20.11.2017, 09.10.2019 and 21.11.2019. None appeared on behalf of the applicant or Department.

7. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal. The issue involved in the instant revision application is that the applicant had voluntarily paid basic excise duty at higher rate of 10.30% adv. while exporting the goods without availing the benefit of Notification No. 4/2006-CE dated 01.03.2006. Although the applicant was entitled for benefit of the said notification which gave them greater relief, they paid duty at rate specified under Notification No. 2/2008-CE dated 01.03.2008 on the products which were cleared for export with intention to claim enhanced/more rebate. According to the Department, the apparent motive of clearing export goods at higher rate of duty @10.30% instead at 5.15 % was to encash the accumulated CENVAT credit. The Department is of the view that the applicant would be entitled to excess duty paid by way of refund under the provisions of Section 11B of the CEA, 1944 in the manner in which it was paid; viz. by way of credit in their CENVAT credit account. On the other hand,

the applicant contends that both notifications; i.e. Notification No. 2/2008-CE dated 01.03.2008 and Notification No. 4/2006-CE dated 01.03.2006 were in existence on the relevant date and they were both mutually exclusive. The applicant claimed that they were therefore eligible for the benefit of both exemption notifications simultaneously.

8. The genus of the issue is the view that in terms of the provisions of Section 5A(1A) of the CEA, 1944, an assessee cannot decline to avail the benefit of an unconditional exemption notification. Before forming any views about the issue itself, it would be pertinent to understand the scope of the embargo under sub-section (1A) of Section 5A of the Central Excise Act, 1944. The text of the said sub-section (1A) of Section 5A of the Central Excise Act, 1944 is reproduced below.

> "(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) 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."

8.1 There are two crucial phrases in the sub-section which require careful consideration; viz. "whole of the duty of excise leviable thereon" and "granted absolutely". The inference that can be drawn is that the phrase "whole of the duty of excise leviable thereon" would mean an exemption which exempts excisable goods entirely or extinguishes the entire duty leviable on those goods. Similarly, the words "granted absolutely" signify that the exemption granted is complete or unconditional. In other words there are no provisos or conditions to the exemption granted. Purely by virtue of being the manufacturer of the goods specified in the exemption notification, the manufacturer becomes eligible for the exemption granted. When the sub-section (1A) of Section 5A of the CEA, 1944 is read in its entirety, it would be inferable that in a situation where the manufacturer is eligible for an exemption from the entire duty leviable on the excisable goods manufactured

without any conditions attached, the manufacturer would no longer have the option to pay duty of excise on such excisable goods.

8.2 In the present case, the applicant is availing the benefit under Notification No. 2/2008-CE dated 28.02.2008and paying duty @ 10.30% on the export goods. It is observed that while Notification No. 4/2006-CE dated 01.03.2006 provides for an effective rate of 4 or 5%, the Notification No. 2/2008-CE dated 28.02.2008 specifies duty 10%. Both these notifications do not grant full exemption. Therefore, by no stretch of imagination can the embargo of Section 5A(1A) of the CEA, 1944 be said to apply to the facts of the present case.

8.3 In this view of the matter, it would follow that nothing would prevent the applicant in the present case from simultaneously availing the benefit of Notification No. 4/2006-CE dated 01.03.2006 and Notification No. 2/2008-CE dated 28.02.2008 which are only granting partial exemption to the applicant. Government further notes that the judgment in the case of Nahar Industrial Enterprises Ltd. vs. UOI [2009(235)ELT 22(P&H)] involved circumstances where that assessee had simultaneously availed the benefit of Notification No. 29/2004-CE dated 09.07.2004 & Notification No. 30/2004-CE dated 09.07.2004 for domestic clearances whereas they had paid duty at the tariff rate on export goods. The rebate sanctioning authority had thereupon sanctioned rebate in cash for the amount of duty paid through cash and the remnant was re-credited into their CENVAT account. The contention of Nahar Industrial Enterprises Ltd. that they were eligible for the rebate of the entire amount of duty paid in cash was rejected by the Hon'ble High Court of Punjab and Haryana. Therefore, the facts of the case in Nahar Industrial Enterprises Ltd. and the present case are different and hence the ratio of that judgment would not apply to the present case.

8.4 The orders passed by the Government in the case of Reva Electric Car Company Pvt. Ltd. 2012(275)ELT 488 (GOI) relied upon by the Department in the impugned Order in Appeal cannot be followed as the ratio of these decisions has been superseded by the judgment of the Hon'ble

Gujarat High Court in the case of Arvind Ltd. vs. UOI[2014(300)ELT 481(Guj.)] which has thereafter been affirmed by the Hon'ble Supreme Court[2017(352)ELT A21(SC)]. In that case, inspite of there being an exemption notification which fully exempted their goods, Arvind Ltd. had availed the benefit of Notification No. 59/2008-CE dated 07.12.2008 and paid duty on the export goods. The relevant portion of the said judgment of the Hon'ble Gujarat High Court is reproduced below.

"9. On, thus, having heard both the sides and on examination of the material on record, the question that involves in these petitions is the wrong availment of the benefit of concessional rate of duty vide Notification No. 59/2008, dated December 7, 2008. Admittedly, the final products were exempted from payment of duty by original Notification No. 29/2004-C.E., dated July 9, 2004 as further amended vide Notification No. 59/2008-C.E., dated December 7, 2008. The fact is not being disputed by the respondents that the petitioner availed Notification No. 59/2008 for clearance made to export and thereafter filed various rebate claims. It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No. 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No. 29/2004 as amended by Notification No. 59/2008-C.E. read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.

10. We also cannot be oblivious of the fact that in various other cases, the other assessees have been given refund/rebate of the duty paid on inputs used in exported goods. The stand of the Revenue is also not sustainable that the payment of duty on final products exported at the will of the assessee cannot be compared with

other type of cases of refund/rebate of duty. Admittedly, when the petitioner was given exemption from payment of whole of the duty and the petitioner if had paid duty at the time of exporting the goods, there is no reason why it should be denied the rebate claimed which otherwise the petitioner is found entitled to. We are not going into the larger issues initially argued before us as subsequently the Revenue has substantially admitted the claim of rebate of excise duty and has not resisted in substance such claim of rebate.

11. Resultantly, both the petitions are allowed quashing and setting aside the orders impugned in both the petitions by further directing the respondents to grant the petitioner of Special Civil Application No. 10887 of 2012 rebate of Rs. 3,15,63,741/- (Rupees Three Crore Fifteen Lac Sixty Three Thousand Seven Hundred Forty One only) and Rs. 39,59,750/- (Rupees Thirty Nine Lac Fifty Nine Thousand Seven Hundred Fifty only) to the petitioner of Special Civil Application No. 10891 of 2012, by calculating interest thereon under Section 11BB of the Central Excise Act, 1944, within a period of eight weeks from the date of receipt of a copy of this judgment."

8.5 It can be inferred from the judgment of the High Court that when there are two unconditional exemption notifications which co-exist, there cannot be any compulsion on the assessee to avail the one which fully exempts excisable goods because such an interpretation would render the exemption with the higher rate of duty to be redundant. Needless to say, all exemptions issued under Section 5A of the CEA, 1944 are issued in public interest with some specific legislative intent and cannot be rendered inconsequential. Applying the ratio of the judgment of the Hon'ble Gujarat High Court which has been affirmed by the Hon'ble Apex Court, it would follow that the applicant cannot be faulted for availing the benefit of Notification No. 2/2008-CE dated 01.03.2008. The applicant is therefore eligible for the benefit of rebate of duty paid on the exported goods.

9. The Department has also contended that the applicant has chosen this method of availing the benefit of Notification No. 2/2008-CE in spite of being eligible for the benefit of Notification No. 4/2006-CE with the intent to encash the CENVAT credit availed on capital goods. Needless to say, payment of duty

from the CENVAT account is equitable with duty paid through account current and hence would be admissible as rebate. The contention made out in the revision application about the motive of encashment of accumulated CENVAT credit is not prohibited by any provision in the notifications or by the statute.

10. In view of above, the Government finds that the impugned Order in Appeal is not proper and liable to be set aside. The Revision Applications filed by the applicant is allowed by holding that they are eligible for the impugned rebate of duty paid by availing the benefit of Notification No. 2/2008-CE dated 01.03.2008.

11. The Revision Application is disposed of in the above terms.

12. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. /2020-CX (WZ) /ASRA/Mumbai DATED

To,

M/s Meditab Specialities Pvt. Ltd.,
12, Gunbow Street, Fort,
Mumbai – 400 001.

Copy to:

1. The Commissioner of Central Goods & Services Tax Mumbai East Zone, 9th Floor, Lotus Infocentre, Parel, Mumbai-400012.
2. The Assistant Commissioner, Division –III, CGST & CX, Mumbai East 9th Floor, Lotus Infocentre, Parel, Mumbai-400012.
3. The Commissioner of Central Goods & Services Tax, (Appeals-II), 3rd Floor, GST Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E), Mumbai-400 051.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy