

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.195/216-219/2012-RA / 5015
F.No.195/223-226/2012-RA

Date of Issue: 01.09.2020

ORDER NO. ^{ASH-461} /2020-CX (WZ)/ASRA/MUMBAI DATED 19.03.2020
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 : 1. M/s Ampoules and Vials Manufacturing Co. Ltd
2. Shri NirajKejriwal, Director

Respondents : Commissioner, Central Excise, Thane-II

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal Nos. SB/132-
135/TH-II/2010 dated 09.06.2010 passed by the Commissioner
(Appeals), Central Excise, Mumbai Zone-I.



ORDER

These Revision Applications have been filed by M/s Ampoules and Vials Manufacturing Co. Ltd. Shri Niraj Kejriwal, Director, Plot No. L-4, MIDC Tarapur, Boisar, Taluka-Palghar, Thane-401 506 (hereinafter referred to as "the Applicants") against the Orders-in-Appeal Nos. SB/132 to 135/Th-II/2010 dated 09.06.2010 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. On the strength of investigations that the Applicants have not received and used inputs, on which CENVAT credit was availed, for the manufacture of the final product, therefore, the cenvat credit so availed was fraudulent and subsequent rebate claims are inadmissible, Department issued a Show Cause Notice 10.05.2007 for denial of cenvat credit and for recovery of rebate which was sanctioned. The Show Cause Notices was adjudicated by the Additional Commissioner, Central Excise, Thane-II confirming the denial of CENVAT credit and recovery rebate of duties sanctioned with penalties.

3. Aggrieved the Applicant then filed appeal before Commissioner (Appeal), Central Excise, Mumbai Zone-I. The Commissioner (Appeals) vide Orders-in-Appeal Nos. SB/132 to 135/Th-II/2010 dated 09.06.2010 upheld the Orders-in-Original dated 12.03.2008 and 02.06.2008 and rejected the appeals filed by the Applicants.

4. Against the Commissioner (Appeals) Order, the Applicants preferred appeals before the Hon'ble Tribunal against denial of cenvat and recovery of rebate already sanctioned. However, vide Order No. S/19-20/12/EB/C-II and A/22-23/12/EB/C-II both dated 28.11.2011, the Tribunal dismissed the appeal, which pertains to the recovery of Rebate, as non-maintainable in view of the Section 35 B of the Central Excise Act, with the observations that the Applicant were at liberty to approach the appropriate forum.



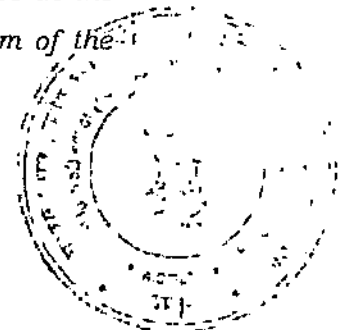
5. Aggrieved, the Applicant then filed the current four Revision Applications.

6. A personal hearing in the case was fixed on 30.11.2017, 27.12.2017 and 03.09.2019. However neither the Appellant nor the Respondent attended the said hearings. In the interest of justice, Government condones the delay of one day in filing the Revision Applications and proceeds to examine the case ex-parte on merits.

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

8. It is found that the Applicants had also filed an appeal before the Tribunal against the portion of Order-in-Appeal dated 09.06.2010 which upheld Order-in-Original No. 04/SKS/Th-II/2008 dated 12.03.2008 dealing the issue of denial of CENVAT credit. In its judgment, the Hon'ble CESTAT vide Order No. A/90787-90788/2017 dated 17.11.2017 -

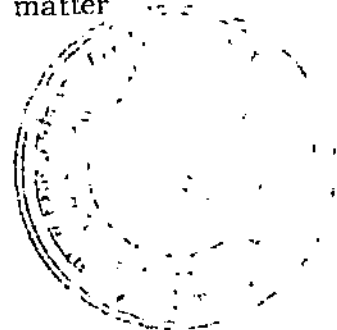
"5. I have carefully considered the submissions made by both sides. I find that the Revenue had relied on the report of Bhilad Sales Tax Check Post wherein it was recorded that the truck mentioned in the 32 invoices were not passed through the check post. On the contrary the appellant had produced 29 numbers of Octroi receipts of Mumbai Octroi Check Post that the same trucks were entered into Maharashtra. The report of Bhilad Check Post is not supported by any other record. Regarding the Octroi receipt is was produced by teh appellant before the adjudicating authority, who has brushed aside the same on the ground that the said Octroi receipt was not submitted during the investigation. I am surprised to know such vital evidence which is issued by the Government Authority why it cannot be submitted at the stage while replying to show-cause notice. If the adjudicating authority had any doubt about the authenticity of the Octroi receipt, he was free to get it verified from the concerned issuing Authority of the Octroireceipt but refusal to deal with such Octroi receipt is serious violation of principles of natural justice in the adjudication. As regard the dispute about description of goods, I am of the



view that merely because the description mentioned in some of the invoices as SSCR coils does not prove that appellant's job worker have not received Patta/Patti for the reason that even Patta/Patti may or may not be in coil or strips form. Therefore this material cannot be conclusive evidence that the goods covered invoice was not received by the worker. As regard the contention in the order of the lower Authorities that since the appellant had not carried out manufacturing activity they are ineligible to avail the CENVAT credit. I am of the view that the goods are manufactured on the basis under Rule 4(5)(2) of the CENVAT Credit Rules, 2004, it is not mandatory on the part of the appellant to carry out in manufacturing activity. Hence, it is not under dispute that the appellant have discharged the Central Excise duty liability in respect of job worked goods, irrespective whether the appellant themselves carry out the manufacturing activity on such job work goods or otherwise, they are legally entitled for the CENVAT credit in respect of inputs sent to the job worker in terms of Rule 4(5)(a) of the CENVAT Credit Rules, 2004. As discussed above, I observe that the Adjudicating Authority as well as Commissioner (Appeals) have not considered the Octroi receipt in defence of the appellant which is very vital evidence as to conclude the present matter the same needs to be reconsidered. I therefore direct the Adjudicating Authority to accept the evidence such as Octroi receipt and any other documents produced by the appellant and after verification of the same pass a speaking order by keeping in mind my above observation. Accordingly, the impugned order is set aside and appeals are allowed by way of remand to the Adjudicating Authority."


9. Government observes that the matters agitated before the Honourable CESTAT and in the instant Revision Applications are inter connected and any decision on Cenvat credit at denovo proceedings will have a bearing on the issue of recovery of rebate. Therefore, the issues raised in the current revision applications are infructuous and wholly dependent on the outcome of denovo proceedings before the Original Adjudicating Authorities.

10. In view of the above discussions and findings, Government remands the matter to the Original adjudicating authorities to decide the matter



afresh in the light of the observations made in the above Tribunal Order dated 17.11.2017.

11. All the 08 Revision Applications are allowed in terms of above.
12. So ordered.


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

454-461
ORDER No. /2020-CX (WZ)/ASRA/Mumbai DATED 19.03.2020.

To,
Shri NirajKejriwal, Director
M/s Ampoules and Vials Manufacturing Co. Ltd.
Plot No. L-4, MIDC Tarapur,
Boisar, Taluka-Palghar,
Thane-401 506

Copy to:

1. The Commissioner(Appeals), Central Excise, Mumbai-I
2. The Commisisoner of CGST & EX, Thane Rural, 4th floor,
BandraKurlaComple, Bandra, Mumbai 400 051.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard files
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

