F NO. 195/379/12-RA

REGISTERED SPEED POST

सत्यमेव जयते

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. 195/379/12-RA/8639 Date of Issue: 31.07.2020

ORDER NO. 463 / 2020-CX (WZ) / ASRA /Mumbai DATED 20.04.2020 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 Piramal Healthcare Ltd., Mumbai

Respondent : Commissioner of Central Excise, Thane-I Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 944 against the Order-in-Appeal No. YDB/5/Th-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise Mumbai Zone-I.

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai

ORDER

This revision application has been filed by M/s Piramal Healthcare Ltd., Mumbai against the the Order-in-Appeal No. YDB/5/Th-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. Brief facts of the case are that the applicant, exported the goods viz. 'Retinol' falling under Chapter 29 of Central Excise Tariff Act, 1985 vide ARE-1 No. 51/2010-11 dated 27.11.2010 and filed claim for rebate of Central Excise duty paid on clearance of goods amounting to Rs.2,63,034/-(Rupees Two Lakh Sixty Three Thousand and Thirty Four only) which had been exported. The same goods were initially exported under ARE-1 No. 37/2010-11 dated 31.08.2010. However, the material was rejected due to non submission of documents by CHA and the goods were received back by the applicant which were re-exported vide ARE-1 No. 51/2010-11 dated 27.11.2010.

3. The Original authority vide Order-in-Original No. SC/R-187/11-12 dated 05.10.2011 rejected the rebate claims on the ground that the applicant had not followed the proper procedure on receipt of exported goods back into their factory and failed to prove the duty paid nature of goods exported under ARE-1 No. 51/2010-11 dated 27.11.2010 and also imposed penalty of Rs.10,000/- on the applicant under Rule 25 of Central Excise Rules, 2002 for contravening the provisions of Rule 11 and 16 of the Central Excise Rules, 2002.

4. Being aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) on the grounds that :

(i) there was no contravention of Rule 16,

(ii) rebate for goods exported under ARE-1 37/10-11 dated 31.08.2020 has not been claimed but rebate of duty for the goods exported under ARE-1 No. 51/2010-11 dated 27.11.2010 without carrying out any process on the material has been claimed and,

(iii) the conditions of Notification No. 19/2004-CE (NT).have been complied with.

(iv) there was no contravention of any of the rule and hence no penalty shall be levied.

Commissioner (Appeals) vide impugned order in appeal no. YDB/5/Th-I/2012 dated 31.01.2012 observed that in the present case the appellants filed the appeal against Order-in-Original No. SC/R-187/11-12 dated 05.10.2011

with Commissioner (Appeals) on 19.12.2011 which was beyond the prescribed time period of sixty days for filing the appeal and as such appeal is barred by limitation. Commissioner (Appeals) further observed that the adjudicating authority after examining all the evidence available on records have rightly given his findings and held that the appellants did not follow the proper procedure on receipt of exported goods back into their factory and failed to prove the duty paid nature of the goods exported under ARE-1 No. 51/2010-11 dated 27.11.2010 and that the claim filed by the appellant is not in accordance with the provisions of Rule 18 & 19 of Central Excise Rules, 2002 with which I do not intend to interfere.

In view of the above, Commissioner (Appeals) upheld the Order in Original No. SC/R-187/11-12 dated 05.10.2011 and rejected the appeal filed by the applicant on merit as well as on limitation.

6 Being aggrieved by the said order, the applicant has filed the present Revision Application under Section 35EE of the Central Excise Act, 1944mainly on the following grounds:-

6.1. There is no contravention of Rule 16 of Central Excise Rules, 2002. This rule is applicable only when the goods received by them are meant for re-making, re-conditioning, In this case, since there was no intention to carry out any process, they did not avail the credit which is proper.

6.2 In the present case they have not carried out any process of the goods and have removed the same as such. The said fact is not disputed. The Commissioner (Appeals) is making implied assumption that the clause 'any other reason' is vide enough to cover situations wherein the goods are not subjected to processes mentioned i.e. being re-made, refined, re-conditioned.

6.3 In the present case they have not carried out any process of the goods and have removed the same as such. Thus they would not fall under processes mentioned i.e. being re-made, refined, re-conditioned.

6.4 The process shall be in the nature of process of remade, refined, reconditions. The meaning of word 'any other process' will take colour from the prior word 'remade, refined, reconditions'. Any other process carried shall also be in the nature of remade, refined, reconditions. The Hon. Supreme Court in the case of Food Corporation of India Vs Yadav Engineering & Contracts,. 1982 SC2-GJX 132 SC and in the case of Iswar Singh 1986 SC 2 GJX 463 held that the principle of ejusdem generics would apply in interpreting the word of general nature which are preceded by the words of specific nature. The words of general nature would

take colour from the words of specific nature. The meaning of word of general nature would be restricted. In this case, the word 'any other process' would take colour from the word 'remade, refined, reconditions' and not any process which are not in nature of remade, refined, reconditions will be covered under the said clause.

6.5 The goods were cleared under excise invoice no. 550041 dated 31.08.2010.

It is a fact that they had initially cleared the goods under ARE-1 No. 37/10-11 dated 31-8-2010 which was received back by them. They further cleared the same goods under ARE-1 51/10-11 dated 27-11-2010 without carrying out any process on the material. It will be evident from the submission above that the provisions of rule 16 are not applicable to the present case. Since the duty was already paid vide earlier clearance and no credit of the same was taken, they did not prepare excise invoice again and accordingly they removed the excisable goods under the same excise invoice no. 550041 dated 31-8-2010 prepared when the goods were originally removed for export. It will be evident from the remark made on the excise invoice that the said goods were imported vide bill of entry no. 76104 dated 07.10.2010 and was re exported vide ARE No. 51/10-11 dated 27.11.2010. Thus the findings of the Commissioner (Appeals) in para 9 of the Order in Appeal that the appellant have cleared the goods without the cover of invoice mentioning the particulars of duty debits made by the appellant in respect of the goods cleared under ARE-1 37/10-11 dated 31.08.2010 is completely erroneous.

6.6 Conditions of Notification No. 19/2004-CE (NT) have been complied with : There is nothing in notification No. 19/2004-CE(NT) which suggests that the provisions of rule 16 shall be complied with. The only fact which is required to be substantiated is that the goods have been exported and duty has been paid on the exported goods. Since these facts are not disputed, rebate should be allowed.

6.7 The Order travels beyond show cause notice and hence it should be set aside. They were never asked to substantiate the fact that the credit of the duty paid in respect of the said goods exported under ARE-1 No. 37/10-11 dated 31.08.2010 has not been availed.

6.8 They have not availed Cenvat Credit of duty paid in respect of the said goods exported under ARE-1 No. 37/10-11 dated 31.08.2010 was never disputed. The Commissioner (Appeals) in para 9 of the Order in Appeal have alleged that the appellants did not produce any records to substantiate that the credit of duty paid in respect of goods exported under ARE-1 dated 31.08.2010. Thus the Commissioner (Appeals) rejected the rebate claims on

the facts which never disputed in the show cause notice. Thus the Order to the extent to said grounds should be set aside. They rely on following judgments:-

a. Phillips Indis Ltd. 2005(191) ELT 1028
b. Manikya Plastichem Pvt. Ltd 2003 (160) ELT 273
c. M/s Polyspin Ltd. 2010 TIOL 1068
d. Natraj Engg. (P) Ltd. 2001(137) ELT 920
e. Pawan Tyres Ltd. 1996(81) ELT 244

6.9 Appeal has been filed within the time limit: In the present case date of receipt of the Order in Original by them was 18.10.2011 and they should have filed the appeal on 17.12.2011 (which is 60 days from the receipt of Order). However the appeal was filed before Commissioner (Appeals) on 19.12.2011 as the last date for filing appeal which was 17.12.2011 was a Saturday and 18.12.2011 being Sunday (weekly holidays). As per General clauses Act 1897, if the office is closed on the last day of the prescribed period, then the next day afterwards on which the office is open is considered as in due time. Therefore, the appeal should be considered as filed within time period.

6.10 Penalty:- They did not prepare the invoice as the goods were already duty paid and the invoice was already prepared and no credit of the same was taken. Further, they were not entitled to the credit as there was no intention to re-make or re-condition the product. Therefore, credit was not permitted under Rule 16. Therefore, there was no contravention of any of the Rules and no penalty shall be levied.

7. Personal hearing in this case was scheduled on 04.10.2019, 05.11.2019 and 20.11.2019. However the applicant neither appeared for the personal hearing on the appointed dates, nor made any correspondence seeking adjournment of hearings. Hence, Government proceeds to decide these cases on merits on the basis of available records.

8. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal. As regards the issue of delay in filing of Appeal before Commissioner (Appeals), Government is in agreement with the explanation offered by the applicant at para 6.9. supra to arrive at a conclusion that the said appeal has been filed by the applicant within time period. Moreover, as per Section 35(1) of the Central Excise Act, 1944, appeal has to be filed within 60 days from the date of communication of the order and a further period of 30 days could be condoned on sufficient cause being shown by the appellant. Assuming without admitting that there was delay of 2 days in filing appeal, the

delay was very much within the condonable limit. Hence, Government sets aside the impugned Order in Appeal to the extent it rejected the appeal on grounds of limitation and proceeds to decide the issue on merits.

9. Government observes that the rebate claim of the applicant was rejected on the ground that the applicant had not followed the proper procedure on receipt of exported goods back into their factory and failed to prove the duty paid nature of goods exported under ARE-1 No. 51/2010-11 dated 27.11.2010. However, the applicant in the Revision Application has contended that Rule 16 of Central Excise Rules, 2002 was applicable only when the goods were received back in the factory for re-making, re-conditioning etc. In the present case, since there was no intention to carry out any process, they submitted that they did not avail the credit which was the proper procedure. Further, they have not carried out any process on the goods and have removed the same goods as such and therefore, there was no contravention of Rule 16 of Central Excise Rules, 2002.

10. From the perusal of the Bill of Entry No. 76104 dated 07.10.2010 Government observes that the applicant re-imported the goods initially exported vide ARE-1 No. 37/10-11 dated 31-8-2010 duty free vide Bill of Entry No. 76104 dated 07.10.2010 by availing the benefit of exemption under Notification No. 158/1995-Cus., dated 14-11-1995. Contents of Para 2 of the of the said Table of Notification No. 158/95-Cus dated 14-11-1995 are reproduced below :

"Goods manufactured in India and reimported for -

(a) reprocessing; or (b) refining; or (c) re-making; or (d) subject to any process similar to the processes referred to in clauses (a) to (c) above.

1. Such re-importation takes place within one year from the date of exportation.

2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow;

3. The Assistant Commissioner of Customs is satisfied as regards identity of the goods.

4. The importer executes a bond to the effect (a) that such reprocessing, refining or remaking or similar processes; shall be carried out in any factory under Central Excise control following the procedure

laid down under Rule 173MM of the Central Excise Rules, 1944 or in a Customs bond under provisions of Section 65 of the Customs Act, 1962 (52 of 1962); (b) that he shall maintain a due account of the use of the said reimported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for reimport are reprocessed, refined or remade or subjected to any process, as the case may be, from the said reimported goods; (c) that in case any waste or scrap arising during such operations and the importer agrees to destroy the same before the officer of Central Excise or Customs, as the case may be, or to pay on such waste or scrap the appropriate duties of customs as if such waste or scrap is imported; (d) that he shall pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained herein : Provided that in case of reprocessing, refining or remaking or similar process, if any loss of imported goods is noticed during such operations, the quantity of such loss shall be exempted from the whole of the duties of customs (basic customs duty and additional customs duty etc.) subject to the satisfaction of the Assistant Commissioner of Customs that such loss has occurred during such operations."

11. From the contents of the Notification No. 158/1995-Cus., dated 14.11.1995 reproduced above it is clear that the goods can be reimported duty free specifically for the purpose of reprocessing, refining or remaking or similar process. Further it is also noticed from the Bill of Entry No. 76104 dated 07.10.2010 that necessary bond for re-export backed by bank guarantee has also been furnished by the applicant. The Notification No. 158/95-Cus. which has been availed by the applicant at the time of import granted exemption from the whole of the duties of customs on the goods reimported into India. Having availed of the benefit of notification at the time of reimporting the exported goods, the applicant was to necessarily comply with all the conditions attendant to the exemption notification.

12. It is also pertinent here to discuss Rule 16 of Central Excise Rules, 2002 which is reproduced below :

16. Credit of duty on goods brought to the factory. –

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being remade, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take

CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be.

Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by a manufacturer who removes the goods.

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being remade, refined, reconditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Principal Commissioner or Commissioner, as the case may be.

From the above Rule 16, it is seen that the assessee shall be allowed the Cenvat credit in respect of duty paid on the goods received in the factory for the purpose of being remade, refined, reconditioned or for any other reasons. As per sub-rule (2) of Rule 16, it is provided that such duty paid goods can be cleared by the assessee under two situations (i) the activity undertaken does not amount to manufacture (ii) the activity undertaken is amounting to manufacture. In both the above situations, the assessee can take Cenvat credit on the duty paid goods. The only condition is that if the activity does not amount to manufacture, the assessee is required to pay duty which should be equivalent to Cenvat credit availed and if the activity amounts to manufacture, the excise duty to be paid in accordance with the valuation provisions under Central Excise Act applicable to the manufacture of goods.

13. As regards the assertion made by the applicant that the goods were not received back in the factory for re-making, re-conditioning and there was no intention to carry out any process; Government observes that this submission is contrary to the stand taken by the applicant while filing the bill of entry for reimport of the exported goods without payment of duty under Notification No. 158/1995-Cus., dated 14.11.1995. Government disagrees with this contention for the reason that sub-rule (1) of Rule 16, provides that goods on which duty

had been paid at the time of removal thereof can be brought back to the factory for being remade, refined, reconditioned or for any other reason. In the instant case, the applicant has availed the benefit of full exemption from customs duties under Notification No. 158/1995-Cus which enables the re-import of exported goods for the same purposes. When the purpose of the re-import has been admitted by the applicant themselves while filing bill of entry for the same goods they cannot now retract from their original stand. The applicant's failure to state the particulars of re-imported goods in the records has unambiguously established their non compliance with the mandatory requirement of Rule 16 ibid. Further, the availment of duty exemption under customs Notification 158/1995-Cus dated 14.11.1995 exposed the applicant's dual stand of purpose on same goods. The purpose of both Rule 16 of the CER, 2002 and the Notification No. 158/1995-Cus. is the same; viz. to enable the manufacturer / exporter to mend the defective goods. The Government finds that the contention of the applicant that the goods were not 'inputs' and therefore Rule 16 would not apply is also without any merit as the admissibility of CENVAT credit has been enabled as a deeming clause to ensure that the CENVAT chain is not broken due to the possible eventuality of goods being defective, The legislature has in its wisdom used the term "inputs" merely to facilitate the availment of Cenvat credit in such a situation.

14. Government observes that the Tribunal has decided a case involving similar facts in CCE, Vadodara vs. PAB Organics Pvt. Ltd.[2012(286)ELT 621(Tri-Ahmd.)] and held that in a situation where the importer abroad had returned the goods without raising invoice and where no customs duty had been paid at the time of re-importation of the said goods, the assessee is required to avail CENVAT credit on the basis of their own invoice generated at the time of original clearance of the goods. Therefore, by not following the proper procedure prescribed under Rule 16 of Central Excise Rules, 2002 for return of the excisable goods, by not taking the Credit of duty on receipt of the goods returned to the factory and not paying an amount equal to the CENVAT credit so taken at the time of re-export of the goods (as the goods are claimed to have been cleared as such) under proper Central Excise Invoice, contravention of Rule 11 & Rule 16 of Central Excise Rules, 2002 is established in this case and the applicant is rightly held liable to penalty under Rule 25 of the Central Excise Rules, 2002. Government therefore upholds the penalty imposed as per impugned Order-in-Original.

15. Under these circumstances, Government finds no infirmity with the Order in Appeal No. YDB/5/Th-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise Mumbai Zone-I and upholds the same.

16. The revision application is thus rejected being devoid of merits.

17. So, ordered.

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

ORDER No. 463/2020-CX (WZ) /ASRA/Mumbai, DATED 20.04.2020

To,

M/s. Piramal Healthcare Limited,
A Wing, 6th Floor, 247 Park,
LBS Marg, Vikhroli (West),
Mumbai – 400 083.

Copy to:

1. The Commissioner of CGST & CX, Navi, Mumbai, 16th Floor, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai-400 705.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner, Division –IV, CGST & CX Navi, Mumbai, 16th Floor, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai-400 705.
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard file
6. Spare Copy.

ATTESTED

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