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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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No.195/240-277/WZ/2018

/2468

Date of Issue: 10.06.2022

ORDER NO. <sup>595-632</sup> /2022-CX (WZ) /ASRA/Mumbai DATED 08.06.2022 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 : Commissioner of CGST & Central Excise, Mumbai East, 9<sup>th</sup> floor, Lotus Info Centre, Station Road, Parel (East), Mumbai - 400 102.
- Respondent : M/s Sun Pharmaceutical Industries Limited, Acme Plaza, Andheri Kurla Road, Andheri (E), Mumbai - 400 059.
- Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal no. 534-571/ME/2018-CT dated 22.06.2018 passed by the Commissioner of CGST & Central Excise, (Appeals - II) Mumbai.

## ORDER

The subject Revision Application has been filed by the Department against the Order-in-Appeal dated 22.06.2018 passed by the Commissioner of CGST & Central Tax (Appeals-II), Mumbai, which decided appeals filed by the Department against 38 Orders-in-Original passed by the original Adjudicating Authority which decided rebate claims filed by M/s Sun Pharmaceuticals Industries Limited (here-in-after referred to as 'the respondent').

2. Brief facts of the case are that the respondent had filed applications under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE (NT) dated 19.06.2004 claiming rebate of the Central Excise duty paid on the goods exported by them. The original authority found that the respondent had paid excess Central Excise duty on the said export consignments. The original authority re-determined the value of goods exported and found that the respondent had paid Central Excise duty in excess of the FOB value. The original authority found that the rebate claim to the extent of the Central Excise duty paid on the re-determined values was admissible to the respondent and having held so, the sanctioning authority held that the entire duty paid, including the excess duty paid, should be refunded to the respondent in cash in terms of the provisions of Section 142(3) of the CGST Act, 2017.

3. Aggrieved, the Department preferred appeals before Commissioner (Appeals) on the grounds that the original sanctioning authority had erred in granting the rebate of the entire duty paid, in cash, on the values which were over and above the FOB value of the exported goods in terms of the first proviso to Section 142(3) of the CGST Act, 2017. The Commissioner (A) vide the impugned order held that the Section 142(4) of the CGST Act, 2017 would be applicable in the instant case as the same is specific to refund of any duty or tax paid under the existing law in respect of goods or services exported and hence the reliance placed by the Department on

Section 142(3) of the CGST Act, 2017 was incorrect. The Commissioner (A) held that the present issue was not that of refund of Cenvat credit and that there was no order which fully or partially rejected the refund claims filed by the respondent and hence the question of lapse of any amount did not rise at all. In view of the above, the Commissioner (A) held that the respondent is eligible for refund in cash of the excess duty paid by them and proceeded to uphold the order of the original sanctioning authority and rejected the appeals filed by the Department.

4. Aggrieved, the Department has filed the present Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The respondent was not entitled to the rebate of the amount paid over and above the FOB value declared by them and the same was liable to be rejected.

(b) 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-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 and the provisions of Section 142(3) of the CGST Act, 2017.

(c) The respondent was eligible for the rebate of duty paid on FOB value and the same had to be restricted to that extent.

In view of the above the Department has sought for the impugned Order-in-Appeal to be set aside.

5. Personal hearing in the matter was granted to the Department on 26.10.2021, however no one appeared for the same. Ms Mithila Shelar, Advocate, appeared online on 03.12.2021 on behalf of the respondent. She requested to maintain the Order-in-Appeal passed by the Commissioner (A) as the same was legal and proper.—She also informed that they would be submitting a written submission. However, no such submission was received till the date of passing of this Order.

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

7. Government notes that the short issue involved in the instant case is whether the amount of Central Excise duty paid in excess of the FOB value of the goods which were exported, is required to be refunded to the respondent in cash. Government notes that the respondent in their submissions before the Commissioner (Appeals) has not disputed the assessable values, arrived at by the original sanctioning authority, which were lower than the values at which Central Excise duty was paid by them. As such, Government notes that assessable values re-determined by the original authority are not in dispute.

8. Government notes that in all the 38 cases the original authority had re-determined the assessable values, which, were lower than the values at which Central Excise duty was paid. In all cases the original sanctioning authority held that even the amount paid in excess to the duty actually payable was required to be refunded in cash in terms of the CGST Act, 2017. As stated above, the respondent has not disputed the assessable values re-determined by the original sanctioning authority, consequently accepting that the quantum of rebate to the extent of the duty paid on the re-determined lower values was the proper amount of rebate allowable in the present case. The issue that remains to be decided is whether the amount paid in excess to the duty actually found payable, has to be treated as lapsed or should be refunded in cash as per the CGST Act, 2017. Government finds that this was the only issue that was agitated before the Commissioner (A) by the Department and the impugned Order-in-Appeal is also limited to the deciding the same.

9. Government notes that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944. Government has examined the CGST Act, 2017 and finds that the same does not provide for application of Section 35EE of the Central Excise Act, 1944 in relation to matters under the CGST Act, 2017. The issue in the

present case has to be decided as per the provisions of the CGST Act, 2017. Thus, Government finds that it does not have the jurisdiction to decide the issue covered by the subject Revision Applications.

10. In view of the above, Government holds that the subject Revision Applications filed by the Department are non-maintainable due to lack of jurisdiction. The Department can seek relief under the provisions of the CGST Act, 2017, with the appropriate authority.

11. The Revision Applications are disposed of in the above terms.

  
(SHRAWAN KUMAR)

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

595-632  
ORDER No. /2022-CX (WZ) /ASRA/Mumbai dated 08.06.2022

To,

The Commissioner of CGST & Central Excise, Mumbai East,  
9<sup>th</sup> floor, Lotus Info Centre, Station Road,  
Parel (East), Mumbai - 400 102.

Copy to:

1. M/s Sun Pharmaceutical Industries Limited, Acme Plaza, Andheri Kurla Road, Andheri (E), Mumbai - 400 059.
2. Commissioner of CGST & Central Excise, (Appeals - II) Mumbai, 3<sup>rd</sup> floor, Utpad Shulk Bhavan, Plot no.C-24, Sector - E, Bandra-Kurla Complex, Bandra (East), Mumbai - 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.