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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.198/09/16-RA/2022

Date of Issue: 28.06.2022

ORDER NO. 660/2022-CX (WZ)/ASRA/MUMBAI DATED 28.06.2022
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 Central Excise & Service Tax, LTU, Mumbai

Respondent : M/s Glenmark Pharmaceuticals Ltd,
Glenmark House, B.D.Sawant Marg,
Andheri (East)
Mumbai 400 099

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. SK/44-
45/LTU/Mumbai/2015-16 dated 16.11.2015 passed by the
Commissioner (Appeals), Central Excise & Service Tax,
(LTU),Mumbai-I.

ORDER

This Revision Application is filed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. SK/44-45/LTU/Mumbai/2015-16 dated 16.11.2015 passed by the Commissioner (Appeals), Central Excise & Service Tax, (LTU), Mumbai-I.

2. The facts of the case in brief is that the respondents are engaged in the manufacture of P&P medicaments falling under Chapter 30 of the CETA, 1985 and were availing exemption under Notification No 49-50/2003-CE dated 10.06.2003. The respondents had cleared goods on payment of duty under various ARE-2 forms for the period December 2011 but few consignments were exported after a period of six months of their clearances from the factory. The respondents had applied for total rebate of duty and vide impugned orders dated 01.04.2014 & 22.05.2014, the sanctioning authority rejected rebate claim amounting to Rs 1,04,608/- and Rs. 52,558/- for the reason that the goods were exported beyond six months. Also out of the amount of Rs. 52,558/-, there was a short-shipment of amount of Rs 32,140/- which has been accepted by the respondent vide their letter dated 10.04.2014 and therefore the total rejected amount of the claim comes to Rs 1,24,216/-.

3. Being aggrieved by the Orders-in-Original, the respondent filed appeals before the Commissioner (Appeals), Central Excise & Service Tax, (LTU) Mumbai-I. The Appellate Authority vide Orders-in-Appeal Nos. SK/44-45/LTU/MUM/2015-16 dated 16.11.2015 and allowed the appeals holding the rejected claims to be admissible alongwith interest subject to verification by the department. The Appellate Authority while passing the impugned Orders-in-Appeal observed that

i) That the condition prescribed under the Notification No 19/2004-CE(NT), that the excisable goods should be exported within six months period from the date of its clearance for export from the factory of manufacture or

warehouse or within such extended period as the Commissioner of Central Excise may, in particular case allow, appears to be directory in nature.

ii) That that once the duty payment on the export goods and their physical export is established beyond doubt, the substantive right to get the rebate of the duty already suffered on such goods stands accrued to the claimant.

iii) That once the fact is established that the duty paid excisable goods cleared from the place of its manufacture for export are actually exported, the failure to observe the procedural norms, if any, can be considered for waiver especially in the case of the respondent which is a large tax payer unit.

iv) that the issue involved in the subject appeals has already been dealt with in details while deciding the respondents earlier appeal vide OIA No 62-51 dated 16.05.2013 and by following the same reasoning in the subject matter, since the duty paid goods have been exported out of the country, the substantial benefits of rebate thereon cannot be denied on account of minor procedural infraction like delay in exportation beyond 6 months from the date of clearance from the factory etc.

5. Being aggrieved by the impugned Order-in-Appeal, the department has filed the instant Revision Application on the following grounds

i) That the Appellate Authority, instead of citing the earlier Order-in-Appeal No. BPS/62-81/ LTU/MUM/2013 dated 16.05.2013 in his findings for deciding the appeal, should have passed a speaking order for deciding the present appeal filed by the respondent.

ii) That the Department have filed Revision Application (F. No.LTU/MUM/CX/Review/Glenmark/104/ 2013 dated 16.08.2013) against the said Order-in Appeal No. BPS/62-81/LTU/MUM/2013 dated 16.05.2013, passed by the Appellate Authority.

iii) That the judgment in the case of HPCL vs. Collector of C. Excise-[1995 (77) ELT256 (SC)] mentioned in the OIA relied upon by the Appellate Authority

in the said order is not applicable in the instant case and is misplaced as it refers to the interpretation of duty liability in respect of export under Rule 12 and Rule 13 of Central Excise Rules 2002 and common procedure provided therein and not about any relaxation in following the procedure.

iv) That under Rule 18 of the Central Excise Rules, 2002, the Central Government has issued a Notification No. 19/2004-CE (NT) dated 06.09.2004 prescribing the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that, the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. Thus this mandatory requirement is not fulfilled by the respondent.

v) That the respondent has failed to fulfill the condition and limitations under Clause (2) of the Notification No. 19/2004-CE (NT) dated 06.09.2004 by not getting the required permission from the jurisdictional Commissioner Central Excise for exporting the goods beyond a period of six months, hence the order passed by the adjudicating authority rejecting rebate claims to that extent is correct as this is a substantial/mandatory requirement. Hence the order of the Appellate Authority allowing the appeal is not correct, proper and legal.

vi) The applicant has relied upon the following case laws in support of their contention

The Revisionary Authority in RE: RAMLAKS EXPORTS PVT. LTD. (2011. (272) E.L.T. 632 G.O.I).

6. Personal hearing in this case was scheduled on 02.03.2022. Shri Mangesh Chaudhari, Senior Manager Finance appeared online for the personal hearing on behalf of the respondent. He reiterated his earlier submission and submitted that since export of the duty paid goods is not in dispute, he requested to maintain the order of the Appellate Authority.

7. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal and the written synopsis filed during the personal previous hearing and also further written submissions dated 13.12.2021.

7.1 On perusal of records, Government observes that the respondent had filed rebate claims before the sanctioning authority of which rebate claims of duty totally amounting to Rs. 1,24,216/- was rejected by the sanctioning authority on the grounds that the goods had been exported after six months from their clearance for export from the factory in violation of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The Appellate Authority allowed the appeals of the respondent and held that the claims were admissible to the respondent and may be sanctioned subject to verification of relevant export documents and along with interest under Section 11BB of the Central Excise Act 1944. It is also observed that in Para 8 of the impugned order by the Appellate Authority that substantive benefits cannot be denied on account of minor procedural infractions like delay in exportation of beyond six months from the date of clearance from factory.

7.2 Government notes that there are many Government of India Orders wherein it is held that the limiting condition of goods to be exported within six months of clearance from the factory and requirement of permission by authority for extension of time whenever there is a delay beyond six months. However, Government also notes that in Order No. 1228/2011-CX, dated 20-9-2011 of Kosmos Healthcare Pvt. Ltd.[2013 (297) E.L.T. 465 (G.O.I.)] the rebate claim was denied on the grounds that *"Clause 2(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture, which has been violated by the applicant; that they had not made any application for extension of time-limit before proper authority; that they had not produced any permission granting extension of time limit from competent authority till date; that the non-compliance of a substantive condition of Notification*

cannot be treated as a procedural lapse to be condoned". This Order No. 1228/2011-CX, dated 20-9-2011 was challenged by Kosmos Healthcare Pvt. Ltd. before Hon'ble High Court Calcutta vide Writ Petition No. 12337(W) of 2012.

7.3 The Hon'ble High Court Calcutta while remanding back the case to the Revisionary Authority vide its Order dated 19.09.2012 observed as under:

"21. On a reading of the Notification No. 40/2001 there is nothing to show that the time stipulation cannot be extended retrospectively, after the export, having regard to the facts of a particular case. The benefit of drawback has, in numerous case, been allowed notwithstanding the delay in export. This in itself shows that the respondent authorities have proceeded on the basis that the time stipulation of six months is not inflexible and the time stipulation can be condoned even at the time of consideration of an application for refund/drawback.

....

....

28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.

32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.

33. *The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above.*

7.4 Upon perusal of Order Hon'ble High Court Calcutta referred supra, Government observes that Hon'ble High Court has interalia observed that the *"Notification No.40/2001 does not require that extension of time to carry out the export should be granted in advance, prior to the export; that the Commissioner may post facto grant extension of time; that what is important is, the reason for delay; that even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed; that if there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended; that in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports"*. Government further observes that the Hon'ble High Court in the order has further noted that, *"in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned"*.

7.5 In the instant case, Government does not find anything on record indicating that the respondent had applied for extension of time in respect of delayed exports, either before or even after carrying out exports explaining the reasons for the delay to the competent authority. Government, taking into account the directions of Hon'ble High Court, Calcutta is of the considered opinion that in the absence any application for extension of time explaining sufficient cause for delay by the respondent, delay cannot be condoned. Government has also observed from the impugned Order that without appreciating the reasons for the delay beyond six months for exporting the impugned goods, the Appellate Authority has allowed the appeal of the respondent holding that the condition prescribed under the Notification No. 19/2004-CE (NT) 'that the excisable goods should be exported within six months' period from the date of its clearance for export from the factory of manufacture or warehouse, or within such extended period as the

Commissioner of Central Excise may, in particular case allow, appears to be directory in nature and any breach of this procedural condition could have been condoned or rectified by the Competent Authority. This finding of the Commissioner (Appeals) is also contrary to the observations of the Hon'ble High Court Calcutta reproduced at para above Supra.

8. In this regard, Government finds it pertinent to reproduce the relevant part of the Order of Hon'ble High Court of Judicature at Bombay dated 15.09.2014 dismissing the Writ Petition No. 3388 of 2013, filed by M/s Cadila Health Care Limited [2015 (320) E.L.T. 287 (Bom.)] and upholding the Order-in-Original dated 23.12.2009 which is as under:-

2. The concurrent orders are challenged on the ground that there was compliance with the notification and particularly the condition therein of export from the factory of manufacturer or warehouse. Though Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6th September, 2004 requires that the excisable goods shall be exported within six months from the date on which it were cleared for export from the factory of manufacture or warehouse, Mr. Shah would submit that the condition is satisfied if the time is extended and it is capable of being extended further by the Commissioner of Central Excise. In the present case, the power to grant extension was in fact invoked. Merely because the extension could not be produced before the authority dealing with the refund/rebate claim does not mean that the claim is liable to be rejected only on such formal ground. The notification itself talks of a condition of this nature as capable of being substantially complied with. The authority dealing with the claim for refund/rebate could have itself invoked the further power and granted reasonable extension.

3. We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.

4. In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise,

Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed.

8.1 Government observes that in the said case, the Hon'ble Bombay High Court in order dated 15.09.2014, while interpreting the amplitude of condition 2(b) of Notification No 19/2004 dated 06.09.2004 held that the Maritime Commissioner (Rebate) had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief.

8.2 Government observes that the aforesaid High Court order dated 15.09.2014 (which is passed later to Hon'ble High Court Calcutta Order dated 19.09.2012 in Writ Petition No. 12337(W) of 2012 in case of M/s Kosmos Healthcare Pvt. Ltd. is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

9. Government also relies on GOI Order No. 390/2013-CX dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

9. Government notes that the Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow :"

As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.

10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original."

10. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. However in the instant case there is nothing on record to show that the respondent has applied for extension of the prescribed time limit and thus there has been failure on the part of an established manufacturer in not obtaining permission from the competent authority for extension of time, which cannot be justified.

11. In view of the foregoing discussion and applying the rationale of case laws referred above, Government holds that the respondent is not entitled to rebate of duty in respect of goods not exported within the period of six months of clearance from the factory, in violation of condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002. In view of above, Government sets aside the impugned Orders-in-Appeal No. SK/44-45/LTU/Mumbai/2015-16 dated

16.11.2015 passed by the Commissioner (Appeals), Central Excise & Service Tax, (LTU), Mumbai-I and restores the impugned Orders-in-Original

12. The revision application is disposed off in terms of above.

Shrawan
21/06/22
(SHRAWAN KUMAR)

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

ORDER No. 660/2022-CX (WZ)/ASRA/Mumbai DATED 21.06.2022

To,
The Pr. Commissioner of CGST, (Mumbai East),
9th Floor, Lotus Infocentre,
Parel, Mumbai 400 012.

Copy to:

1. M/s Glenmark Pharmaceuticals Ltd, Glenmark House, B.D.Sawant Marg, Andheri (East), Mumbai 400 099
2. The Commissioner of CGST (Appeals-II), Mumbai, 3rd Floor, CGST Bhavan, Plot No C-24, Sector E, Bandra Kurla Complex, Bandra (East), Mumbai 400 005
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy.