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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. 195/88-96/WZ/2018-RA/2931 Date of issue: 30.06.2022

662-671
ORDER NO. /2022-CX (WZ)/ASRA/MUMBAI DATED 28.6.2022

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 : M/s. Cipla Limited

Respondent : Pr. Commissioner of CGST, Mumbai Central.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PK/135-143/MC/2018 dated 21.02.2018 passed by Commissioner of GST & Central Excise (Appeals-II), Mumbai.

ORDER

These nine Revision Applications are filed by M/s. Cipla Limited, Cipla House, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 013 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. PK/135-143/MC/2018 dated 21.02.2018 passed by Commissioner of GST & Central Excise (Appeals-II), Mumbai.

2. Brief facts of the case are that the Applicant had filed rebate claims at different times with Maritime Commissioner, Central Excise, Mumbai-I. The rebate sanctioning authority, observed that in some ARE-Is, the goods were not shipped within the period of six months as stipulated under Notification No.19/2004-CX (N.T) dated 06.09.2004 and therefore rejected part of the claims vide following Orders-in-Original:

S. No.	OIO No./Date	Amount rejected (in Rs.)
1	2054-MTC-R/2016-17 dated 02.02.2017	1,61,197
2	2146-MTC-R/2017-18 dated 14.02.2017	16,526
3	2261-MTC-R/2017-18 dated 08.03.2017	1,07,874
4	2162-MTC-R/2017-18 dated 30.03.2017	17,005
5	114-MTC-R/2017-18 dated 13.04.2017	7,41,817
6	115-MTC-R/2017-18 dated 13.04.2017	32,246
7	272-MTC-R/2017-18 dated 12.05.2017	52,379
8	277-MTC-R/2017-18 dated 12.05.2017	2,22,524
9	285-MTC-R/2017-18 dated 15.05.2017	77,311

Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Applications mainly on the grounds that:

(a) It is submitted that rebate of duty on export of goods, subject to satisfaction of conditions of notification no. 19/2004-C.E.dated 06.09.2004, is a beneficiary provision in interest of export business of the country and therefore required to be interpreted liberally. Lenient view is called for to boost the export performance of the country when factum of export of goods is not in dispute.

(b) It is true that condition 2 (b) of notification no. 19/2004-C.E.dated 06.09.2004, stipulates that the excisable goods shall be exported within be 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. However, the said condition is not that rigid, so as, to take away the export benefit available to the applicants and can be relaxed by the Commissioner.

(c) The applicants submit that there is substantial compliance to conditions governing export of goods. The physical export of goods and their duty paid characters which are substantive conditions of notification are duly complied by the applicants. The factum of export has been admitted by the revenue. The export of disputed goods even though effected beyond the stipulated period of six months has fetched foreign exchange for the country.

(d) It is settled law and express policy of the Government to ensure that domestic levies are not exported along with goods. In the instant case, if rebate is denied, simply for failure to export goods within stipulated time limit would result in taxing of exported goods or burdening the export goods with domestic levy. This is against the legislative intent to encourage exports.

(e) As already stated above, the condition to export goods within six months from the date of clearance from their factory as stipulated in the notification is not very rigid but made flexible by empowering the Commissioner to extend the time limit to export the goods in deserving cases. Hence, when the physical export of goods is not under dispute, full condonation can be given to perceive the object and intent of Rule 18 of the Central Excise Rule, 2002. In other words, if physical export of goods is not under challenge, the stipulated time limit to export goods within six months can be relaxed and extended post facto.

(f) The applicants further submit, that, failure to export goods within time limit prescribed in notification no. 19/2004-C.E.(N.T.) dated 06.09.2004, is neither fatal to revenue or nor serious prejudice to revenue, when actual export of goods admitted by revenue.

(g) It is submitted that there is no general rule as to when a provision of a notification is to be treated as mandatory or directory or procedural but will depend on the facts and circumstance of each case and object of the statute. The main object of Rule 18 is to grant rebate of duty paid on goods which are exported, subject to conditions specified in the notification no. 19/2004 dated 06.09.2004. In the present case, even though physical export of disputed goods is not at all in question, the object of rule 18 is being defeated, by holding the condition to export goods within six months from the date of clearance from factory, as stated in the notification to be mandatory condition.

(h) The applicants submit that non-adherence to time limit for export of goods after clearance from factory specified in the aforesaid

notification is a technical breach not sufficient to deny the substantial benefit available to the applicants. The rebate sanctioning authority has failed to appreciate the physical export of goods and exercise discretionary power to relax conditions of said notification, so as, to have zero rated exports.

In view of above submissions, the applicant prayed to:

a) Set aside the impugned Order-in-Appeal dated 21.02.2018 passed by the Commissioner (Appeals) of Central Excise, Mumbai Zone II, and allow the appeal in full with consequential relief in accordance with law;

b) Condone the delay in export of goods in the interest of export promotion;

c) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

4. Personal hearing in the case was fixed for 07.12.2021. Shri Prashant Mhatre, Associate Director (Indirect Taxation), attended the online hearing and submitted that they have two issues: (i) their claims have been rejected as they could not export in six months owing to logistical difficulties. He submitted that there being no doubt on export of duty paid goods, their claim should be allowed; (ii) Excess duty paid over FOB value should be returned in the manner it was paid.

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

6. Government observes that the issue involved is whether the condition of carrying out exports within six months of its clearance from the factory as required under Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 issued under rule 18 of the Central Excise Rules, 2002 is procedural in nature and whether this condition is condonable?

7.1 Government observes that the relevant condition mentioned at para 2(b) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 reads as under:

> ***(2) Conditions and limitations:*** -
>
> *(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;*

As per the said provisions, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The jurisdictional Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In the instant case no such extension was sought. Therefore, it is apparent that the Applicant has neither exported the goods within prescribed time nor has obtained any extension of time limit from the competent authority.

7.2 Government finds that the contention of the applicant that *non-adherence to time limit for export of goods after clearance from factory specified in the aforesaid notification is a technical breach not sufficient to deny the substantial benefit available to the applicants* cannot be accepted in the instant matter. As per Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004, rebate of the whole of the duty paid on all excisable goods exported to any country is to be granted subject to compliance of specified conditions, limitations and procedures. Rule 18 of the Central Excise Rules, 2002, where under said Notification is issued, also specifies it:

> ***Rebate of duty.*** *— Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.*

Thus, a specified condition with respect to time limit is required to be mandatorily complied with and its non-adherence cannot be treated as a procedural lapse which can be condoned.

7.3 The other contention of the Applicant that *the stipulated time limit to export goods within six months can be relaxed and extended post facto* is also without any basis in as much as they have failed to even file an application for extension with the competent authority. In compliance with the said stipulated condition, the applicant should have filed an application for extension of time limit with the competent authority as soon as the period of six months for export of goods was nearing.

7.4 During personal hearing, the applicant had raised another issue - *Excess duty paid over FOB value should be returned in the manner it was paid.* Government finds that in the written submissions no such issue has been raised and no relief on this aspect has been prayed. However, from impugned Order-in-Appeal, it is observed that this matter was raised and has been addressed by the Appellate authority at para 5 of said OIA, which reads as follows:

> *'The appellant, in respect of Orders-in-Original No. 277-MTC-R/2017-18 dated12.05.2017 and 272-MTC-R/2017-18 dated 12.05.2017 had contended for giving specific direction for allowing the credit of duty paid over and above FOB value in the manufacturer's credit account, I find that the rebate sanctioning authority vide impugned orders had already allowed the amount of Rs. 7,400/- and Rs. 8,276/respectively, by way of credit in their respective manufacturer's Cenvat Account. As such, the issue needs no further directions.'*

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. PK/135-143/MC/2018 dated 21.02.2018 passed by the

Commissioner of GST & Central Excise (Appeals-II), Mumbai and rejects the impugned revision applications filed by the applicant.

9. The Revision Applications are disposed of on the above terms.

Shrawan 28/6/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 662-671 /2022-CX (WZ)/ASRA/Mumbai dated 28.6.2022

To,
M/s. Cipla Limited,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013.

Copy to:

1. Pr. Commissioner of CGST, Mumbai Central,
   GST Bhavan, 115, Maharishi Karve Marg,
   Churchgate, Mumbai – 400 020.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.