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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.195/578-579/13-RA / 3445

Date of issue: 11.08.2022

ORDER NO.763-764/2022-CX (SZ)/ASRA/MUMBAI DATED 08.08.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Aurobindo Pharma Limited

Respondent: Commissioner of Central Excise, Hyderabad-I

Subject : Revision Applications filed under Section 35EE of the Central Excise  
Act, 1944 against the Orders-in-Appeal Nos. 07&08/2013(H-I) dated  
28.01.2013 passed by the Commissioner, Customs, Central Excise & Service  
Tax (Appeals-I), Hyderabad.

## ORDER

The subject two Revision Applications have been filed by M/s. Aurobindo Pharma Limited (Unit-V), IDA, Pashamylaram, Patancheru Mandal, Medak District - 502307 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. 07&08/2013(H-I) dated 28.01.2013 passed by the Commissioner, Customs, Central Excise & Service Tax (Appeals-I), Hyderabad.

2. Brief facts of the case are that the Applicant, a manufacturer exporter of medicaments falling under Chapter Heading No. 3004, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate sanctioning authority sanctioned the rebate claims vide Orders-in-Original No. 17/2012(R) dated 06.09.2012 and 18/2012(R) dated 07.09.2012, however, it appropriated the amount sanctioned against pending dues of the applicant. Aggrieved, the applicant filed appeals which were rejected vide impugned Orders-in-Appeal.

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

- i. The Deputy Commissioner of Central Excise erred in law in appropriating the impugned amounts under Section 11 of Central Excise Act, 1944 in the impugned orders in original and on appeal the learned Commissioner (Appeals) also erred in law in upholding the orders-in-original to the extent of appropriating the impugned demand amounts from the rebate amount sanctioned.
- ii. When the Deputy Commissioner appropriated the amounts in his orders in original dated 06/07-09-2012 from the rebate sanctioned, the demand amounts relating to OIA No 81/2011 (H-I) CE dated 28.10.2011 are pending in appeal with CESTAT, Bangalore along with stay application and

stay application stood posted on 17.09.2012. The original authority did not consider the pleadings of the applicants that:

the instructions contained in para 2(c) of the Circular No 788/21/2004 C X dated 25.04.2004 are not only not based on the two provisos of Section 35C(2A) but also not correct in not applying to second stage appeals relying on the following judgments:

- o Shree Cements Limited Vs UOI 2001 (133) E.L.T 301 (Raj)
- o Pami Metals Pvt Ltd vs CCEX, Kolkata 11 2006 (205) E.L.T 548 (Tri-Kolkata)
- o Malu Sleepers Pvt Ltd Vs CCEX, Mysore 2009(245) E.L.T. 655 (Tri-Bang)

The Original Authority and the appellate authority have totally ignored the above pleading of the appellant. The Commissioner(Appeals) in para 8(vii) of his findings simply relied upon the above circular without considering the above averments of the appellants including the case law.

iii. As on the date of the issue of Order in Appeal i.e., 28.01.2013, the above Circular dated 25.05.2004 has been rescinded by Circular No 967/01/2013 CX dated 01.01.2013. Therefore, now it is the plea of the applicants that the latest circular dated 01.01.2013 relating to recovery by coercive measures is declared as non est by the Hon'ble Rajasthan High Court in the case of Mangalam Cement Limited Vs Superintendent of C.Ex Range III, Kota

iv. When the appeal is pending before the CESTAT they do not constitute arrears under Section 11 and cannot be recovered by the revenue under Section 11 as it has not reached finality.

On the above grounds, the applicant prayed to set aside the impugned order in appeal no 7 & 8/ 2013 (H-I) CE dated 28.01.2013

4. A Personal hearing was fixed in this case on 02.03.2022. However, in response, the applicant filed a letter dated 26.02.2022, the extracts of contents of which are reproduced hereunder:

- i. we submit that rebate sanctioning authority in OIO Nos. 57/2012 (R) Dt. 06.09.12 and 58/2012 (R) Dt 07.09.12 recovered dues relating to OIO No. 16/2011 Dt. 31.03.2011 (credit on ethanol as input received from M/s. Andhra Sugars). Subsequently Commissioner (Appeal), Hyderabad vide OIA Nos. 07 & 08/2013 (H-1) CE dated 28.01.2013 has confirmed the OIOs dated 06.09.12 and 07.09.12.
- ii. Aggrieved by OIA dated 28.01.13, Applicant has filed the present Revision Application.
- iii. In this regard we submit that as the issue relating to availing credit on Ethanol is decided in favour of applicant (M/s. Aurobindo Pharma Limited), upon filing refund claim department has sanctioned refund of amounts recovered.

In view of the above we submit that we are withdrawing the present two Revision Applications filed against OIA Nos 07 & 08/2013(H-1) CE Dated 28.01.2013.

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

6. Government observes that the applicant had filed the impugned revision applications for sanctioning the rebate amount in cash. The rebate sanctioning authority had sanctioned cash rebates amounting to Rs.32,01,223/- and Rs.19,30,195/- vide two separate Orders-in-Original. However, a part of the sanctioned cash rebates were appropriated towards outstanding Central Excise duty liability amounting to Rs.44,21,181/- arising out of demand confirmed against the applicant vide Order-in-Original No. 16/2011 dated 31.03.2011. The applicant had appealed against this confirmed demand Order which was

allowed and consequently the appropriated rebate amount was refunded to them. In the meantime, the applicant had appealed against the impugned Orders-in-Original of the rebate sanctioning authority and on rejection of same, had filed the instant revision applications. Now, as the matter is resolved, the applicant has requested for withdrawal of the revision applications.

7. In view of the above discussions, the impugned two Revision Applications filed by the applicant are dismissed as withdrawn.

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

  
(SHRAWAN KUMAR)

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

ORDER No. 763 -764 /2022-CX (SZ)/ASRA/Mumbai dated 08.08.2022

To,

M/s. Aurobindo Pharma Limited (Unit-V),  
IDA, Pashamylaram, Patancheru Mandal,  
Medak District - 502307.

Copy to:

1. Commissioner of CGST,  
Medchal, GST Bhavan,  
Basheerbagh,  
Hyderabad - 500 004.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.