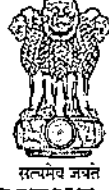


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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.195/392/15-RA-CX/3659

Date of Issue: 05.08.2022

ORDER NO.774/2022-CX (WZ) /ASRA/Mumbai DATED 24.08.2022 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 Sun Pharmaceutical Industries Limited,
Plot No.817/A, Tal. Padra, District, Vadodara,
Kharkhadi - 391450.
- Respondent : Commissioner of Central Excise & Customs,
Vadodara-I, Central Excise & Customs Bhavan,
Race Course Road, Vadodara - 390 007.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal no.
VAD-EXCUS-001-APP-257/2015-16 dated 11.09.2015
passed by the Commissioner (Appeals - I), Central
Excise, Customs & Service Tax, Vadodara.

ORDER

The subject Revision Application has been filed by M/s Sun Pharmaceutical Industries Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 11.09.2015 passed by the Commissioner (Appeals -I), Central Excise, Customs & Service Tax, Vadodara, which decided an appeal filed by the applicant against the Order-in-Original dated 11.06.2015 passed by the original Adjudicating Authority which in turn decided a rebate claim filed by the applicant.

2. Brief facts of the case are that the respondent, a 100% EOU, filed a rebate claim vide their application dated 19.10.2007 for an amount Rs.8,64,030/- with respect to goods exported by them vide ARE-1 No.9 dated 16.08.2007 along with the other relevant documents. The Order-in-Original dated 11.06.2015 records that the original application filed by the applicant was not traceable in the Division office. Thereafter, the applicant vide their reminder letter dated 19.11.2012 submitted a photocopy of the original claim and its enclosures along with a copy of their original application which bore the stamp of the office of the jurisdictional Assistant Commissioner acknowledging receipt of the same on 19.07.2007. The original authority found that in terms of notification no.24/2003-CE dated 31.03.2003 and Section 5A of the Central Excise Act, 1944 all goods cleared by an EOU for export were exempted from payment of Central Excise duty and it was mandatory for the applicant to avail of such exemption; further the original authority also found that the applicant had failed to provide the requisite documents to prove 'due exportation of goods' and proceeded to hold that the applicant was not eligible to claim rebate/refund of the duty paid by them in the instant case for the above stated reasons. The applicant preferred an appeal before the Commissioner (Appeals) against the Order-in-Original dated 11.06.2015. The Commissioner (A) rejected the appeal and upheld the Order of the original authority.

3. Aggrieved, the applicant has preferred the subject Revision Application on the following grounds:-

- (a) There was gross violation of natural justice as the their claim which was filed on 19.10.2007 was sent for verification after a period of six years and finally rejected in the year 2015; that the order passed after an inordinate delay requires to be quashed;
- (b) The Commissioner (A) should have appreciated that the applicant had filed the rebate claim in the year 2007 along with all the necessary documents and that it was the fault of the Department who had misplaced all the original documents enclosed with the said claim and that they had once again submitted photocopies of the entire claim along with its enclosures vide their letter dated 19.11.2012;
- (c) They had vide their letter dated 26.02.2015 again submitted copy of the BRC to the Department; that it was not their fault that the Assistant Commissioner (Export) had not replied to the letter of the original authority seeking to ascertain the genuineness of the documents like ARE-1, Shipping Bill, Airway Bill etc. and confirm the proof of export;
- (d) The Commissioner (A) had erred in stating that they had not provided documents to prove export of goods as they had submitted the original copy of all the relevant documents, which include :-
 - Original and Duplicate copy of ARE-1 dated 16.08.2007;
 - Copy of Invoice No.5009 dated 17.08.2007;
 - EP copy of Shipping Bill No.6457718 dated 17.08.2009;
 - Copy of Cenvat Credit Register for the month of August 2007;
 - Airway Bill No.125-33425980 dated 18.08.2007;
- (e) The Commissioner (A) had erred in distinguishing the case laws relied upon by them on the flimsy grounds that export was not conclusively proved by them;
- (f) They had made a bonafide error by clearing the goods for export on payment of duty under Rule 18 of the Central Excise Rules, 2002 and that such duty paid should be treated as a deposit and returned to them in the manner paid and relied upon the following cases – Flamingo

Pharmaceuticals Limited [2012 (283) ELT 466 (GOI)] and Johari Digital Health Care Limited [2012 (281) ELT 156 (GOI)]; that the Commissioner (A) was required to follow the ratio of the above Orders and had erred in not doing so;

(g) The Commissioner (A) had failed to appreciate the various judicial decisions of the higher authorities wherein it was held that Department cannot retain the amount collected from the assessee without any authority of law and the same needs to be returned to the assessee in the manner it was paid. They relied upon the following decisions in support of their case:

- Balkrishna Inds Ltd. [2011 (271) ELT 148 (GOI)]
- Dagger Forst Tools Ltd [2011 (271) RLT 471 (GOI)]
- Orchid Health Care vs UOI [2013-TIOL-416-HC-MAD-CX]
- Watson Pharma Pvt. Ltd. [2014 (313) ELT 876 (GOI)]
- GTN Engineering (India) Limited [2012 (284) ELT 737 (GOI)]
- Monomer Chemical Ind. P. Ltd. [2014 (312) ELT 929 (GOI)]
- Honeywell Automation (I) Ltd. [2012 (278) ELT 401 (GOI)]

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and their rebate claim be allowed with consequential relief or allow them avail Cenvat credit of the same.

4. Personal hearing in the matter was held on 30.03.20022 and Shri Ashok Nawal, Cost Accountant, appeared online on behalf of the applicant and reiterated their earlier submissions. He stated that in case rebate was not to be sanctioned, they should have been allowed re-credit in the manner it was paid. He contended that relevant documents were submitted but the Commissioner (Appeals) did not acknowledge the same. He requested to allow refund in cash in view of Section 142(3) of the CGST Act, 2017.

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

6. Government notes that the rebate claim filed by the applicant, a EOU, was rejected for the reasons that they were not required to pay duty as their clearances for export was exempted in terms of notification no.24/2003-CE dated 31.03.2003 and that they could not prove that the goods cleared were actually exported. Government finds that in the present case the applicant has submitted that they had committed an error by clearing goods for export on payment of duty under Rule 18 of the Central Excise Rules, 2002 and that such duty paid should be treated as a deposit and returned to them. In this context, Government finds that in such case, where it is not in doubt that the goods cleared have been exported and the duty on the same has been paid, albeit erroneously, the amount so paid by the exporter cannot be retained by the Government without authority of law. Similar view has been expressed by the Hon'ble High Court of Punjab and Haryana in the case of Nahar Industrial Enterprises Limited vs UOI [2009 (235) ELT 22 (P&H)] wherein it had upheld the decision of the original authority to hold that in such cases the amount paid by the exporter has to be refunded to them in the manner in which it was paid initially.

7. Government now comes to the second point on which the rebate claim of the applicant was rejected. Government notes that both the lower authorities have held that the applicant failed to prove that the goods cleared by them for export was indeed exported. In this connection, Government finds that the Order-in-Original dated 11.06.2015 has recorded that the applicant had submitted the original copies of the following documents when they filed their claim on 19.10.2007:-

- Original and Duplicate copy of ARE-1 dated 16.08.2007;
- Copy of Invoice No.5009 dated 17.08.2007;
- Copy of EP copy of Shipping Bill No.6457718 dated 17.08.2009;

- Copy of Cenvat Credit Register for the month of August 2007; and
- Airway Bill No.125-33425980 dated 18.08.2007;

The Order-in-Original also records that these original documents filed by the applicant have been lost by the Department and the claim had been taken up for decision on the basis of photocopies of the documents provided by the applicant. Further, it is also on record that the applicant submitted the BRC in respect of the goods exported. Copies of the above documents have also been submitted by the applicant during the course of these proceedings. On examining the same it is noticed that the ARE-1 has been endorsed by the Customs officer to the effect that the goods covered by it had been exported and also bears the Shipping Bill Number and the EGM Number. This document is further backed by the copy of the Shipping Bill, the Invoice and the Airway Bill covering the export consignment. The proof of payment is provided by the extract of the Cenvat credit register. Given the above, Government finds that the applicant has provided all the necessary documents to prove that the goods in question were exported. Government notes that both the lower authorities have relied on the fact that the Customs authorities had failed to respond to the letter of the original authority seeking to verify the genuineness of the documents submitted by the applicant to decide the case against the applicant. Government finds this decision to be unfair and unjust as the applicant cannot be held to be at fault for the non-receipt of confirmation from the Customs authorities, particularly, in view of the fact that the original documents submitted by the applicant had been misplaced by the Department. The observation of the Commissioner (A) that the copy of the original application filed by the applicant did not bear a serial number or signature of the receiving official thereby putting its authenticity in doubt, is again unfounded as no evidence to the contrary has been adduced by the Department. Government thus finds that both the lower authorities have erred in holding that the applicant had failed to prove that the goods cleared have been actually exported, as the documents submitted by the applicant which have been listed above, clearly indicate that the goods in question have been exported and the proceeds towards the same received.

8. Thus, Government finds the observation of the Commissioner (Appeals) that the applicant had not followed the correct procedure inasmuch as they had erroneously debited their Cenvat Account towards Central Excise duty in respect of goods cleared for export, to be proper, as it is an admitted fact that they were not required to pay duty on such clearances. However, as discussed above, Government finds that the amount paid by the applicant cannot be retained by the Government without authority of law and deserves to be refunded to the applicant in the manner paid by them and accordingly holds so.

9. The subject Revision Application is decided on the above terms.

Shrawan
24/8/22

(SHRAWAN KUMAR)

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

ORDER No. 774/2022-CX (WZ) /ASRA/Mumbai dated 24.08.2022

To,

M/s Sun Pharmaceutical Industries Limited,
Plot No.817/A, Tal. Padra, District, Vadodara,
Kharkhadi - 391450.

Copy to:

1. Commissioner of Central Excise & Customs, Vadodara- I, Central Excise & Customs Bhavan, Race Course Road, Vadodara - 390 007.
2. Commissioner (Appeals - I), Central Excise, Customs & Service Tax, Vadodara, Central Excise Building, 1st floor Annex, Race Course, Vadodara - 390 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.