

REGISTERED SPEED POST



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. 195/109/14-RA 17088

Date of Issue:- 07.12.21

ORDER NO. 853/2021-CX (SZ)/ASRA/MUMBAI DATED 06.12.21 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.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. 4 to 6 /2013 (H-III) CE & 8/2014 (H-III) CE dated 28.01.2014 passed by the Commissioner of Central Excise (Appeals-I & III), Hyderabad.

Applicant: M/s Ranbaxy Laboratories Ltd., Industrial Area No.3, A.B.Road, Dewas-455001

Respondent: Commissioner of CGST, Hyderabad

ORDER

This Revision application is filed by M/s Ranbaxy Laboratories Limited, Industrial Area No. 3, A.B. Road, Dewas (MP) – 455 001 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. 4 to 6 /2013 (H-III) CE & 8/2014 (H-III) CE dated 28.01.2014 passed by the Commissioner of Central Excise (Appeals-I & III), Hyderabad.

2. The applicants are manufacturer and exporter of P.P. Medicaments and Bulk Drugs falling under CSH 30 & 29 of Central Excise Tariff Act, 1985. The applicant are procuring medicaments viz. 'Fenules Capsules & Coldact Flue Capsules' manufactured by M/s Natco Pharma Ltd., Kothur, Dist. Mahaboobnagar, Andhra Pradesh (hereinafter referred to as the 'manufacturer') on loan license basis. The raw materials and packaging materials are being supplied by the applicant to the manufacturer. The applicant have been filing rebate claims against export of above referred excisable goods on which duty was paid through the CENVAT Credit account of the applicant maintained by the manufacturer i.e. M/s Natco Pharma Ltd., Kothur (AP). The manufacturer issued the disclaimer certificate in favour of the applicant for claiming rebate of duty on finished goods so exported.

3. The applicant had filed 19 rebate claims for total amount of Rs. 64,49,311/- (Rupees Sixty Four Lakh Forty Nine Thousand Three Hundred Eleven Only). During the scrutiny of the said rebate claims, the rebate sanctioning authority observed that the rebate was claimed on CIF value which is contractual price between applicant and their buyer. As such, the rebate sanctioning authority after due process of pre-audit of the said claims had sanctioned rebate of the duty paid on FOB value of exported goods and the balance was allowed as re-credit to the applicant. Thus the Original Adjudicating Authority sanctioned rebate of Rs. 44,10,391/- in cash (duty on FOB Value) and amount of Rs. 20,38,920/- (duty on excess of FOB Value) was allowed as re-credit to the Cenvat account of applicant. The applicant had no dispute about

the fact that they were eligible for cash rebate to the extent of the duty payable on FOB value, but contended that the duty paid in excess of amount of FOB value should have been allowed as re-credit to the Cenvat account of the manufacturer. Hence, aggrieved by the said Orders-in-Original the applicant filed an appeal before the Commissioner (Appeals-I & III), Hyderabad.

4. The Appellate Authority vide impugned Orders in Appeals upheld the Orders-in-Original on the following grounds:-

4.1 As per the explanation under Clause (A) under Section 11B of CEA, 'Refund' includes rebate of duty of excise on excisable goods exported out of India. As per Section 11B of CEA, 1944, the eligible amount of refund/ rebate shall be granted to the claimant of the refund/ rebate. Therefore, sanction of part of rebate amount to the manufacturer (M/s Natco Phrama) of the goods when the claim was preferred by the applicant (M/s Ranbaxy) is not permissible as per the said provisions of Section 11B of CEA, 1944.

4.2 Since the rebate could only be sanctioned to the person who claimed the same, the sanction of the rebate payable as re-credit to the manufacturer did not arise at all.

4.3 M/s Natco Pharma Ltd., the manufacturer of the goods, having paid duty in excess of the duty payable, on the goods removed for export could have preferred an independent claim for refund before a proper authority under Section 11B of CEA, 1944 which could be considered by the concerned authority.

5. Aggrieved by the said order, the applicant filed instant Revision Application on following grounds:-

5.1 The appellate authority has erred in mentioning that the sanctioning authority has allowed amount of Rs. 31,449/-, Rs.78,546/-, Rs. 68,274/- and Rs. 18,60,651/- as re-credit to the applicant's CENVAT account with manufacturer. The sanctioning authority has allowed the above mentioned

amount (total Rs. 20,38,920/-) as re-credit to the applicant's CENVAT account and not the CENVAT account maintained by the manufacturer.

5.2 The applicant wish that the re-credit should be allowed to the cenvat credit account of the applicant maintained by the manufacturer.

5.3 They do not have dispute on granting cash rebate on FOB value instead they have contested on the issue of re-credit allowed by the original authority to them instead of allowing the same in the manner in which it was paid by the manufacturer of the goods on their behalf.

5.4 The applicant, being merchant exporter, are not required to maintain any cenvat credit account rather such account is being maintained on his behalf by the manufacturer and such re-credit is to be allowed to the applicant's Cenvat Credit Account maintained by the manufacturer. As a merchant exporter, the applicant neither avail such credit nor utilize the same.

The applicant have relied on following case laws :-

- a) M/s Randiall India Ltd. 2013 (298) ELT 149 (GOI)
- b) M/s Unique Pharmaceutical laboratories 2013 (295) ELT 129 (GOI)
- c) M/s Honeywell Authomation (I) Ltd. 2012 (278) ELT 401 (GOI)
- d) M/s Evershine Polyplast Pvt. Ltd. 2012 (278) ELT 133 (GOI)
- e) M/s Waves Foods Pvt. Ltd. 2013 (292) ELT 140 (GOI)
- f) M/s Nahar Industrial Enterprises LTd. 2009 (235) ELT 22 (P&H).

6. A Personal Hearing in the matter was held on 23.10.2019. However due to change in the Revisionary authority Personal hearing was again fixed on 22.07.2021. Shri Ashok Naval, Advocate appeared for the hearing online on behalf of the applicant. He submitted that Rebate was allowed for FOB and difference between CIF & FOB was allowed as credit. Since they were merchant exporter, credit was to be taken by the supporting manufacturer. He requested to allow credit to supporting manufacturer.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. . Government finds that the issue for decision in these revision applications is whether the amount of rebate claimed on the value in excess of the duty amount paid on FOB value could be re-credited to the manufacturer (M/s Natco Pharma) while the goods were exported and the rebate was claimed by the applicant who is the merchant exporter.

8. The Government notes that the applicant had claimed the rebate on CIF value of the goods exported. In this regard, the Government observes that w.e.f. 1-7-2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act. As per para 3(b)(ii) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, the rebate sanctioning authority has to satisfy himself that rebate claim is in order before sanctioning the same. If the claim is in order he shall sanction the rebate either in whole or in part. The said para 3(b)(ii) is reproduced below :

"3(b) Presentation of claim for rebate to Central Excise :-

(i)

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The said provisions of this notification clearly stipulate that after examining the rebate claim, the rebate sanctioning authority will sanction the claim in whole or part as the case may be depending on facts of the case.

9. The Government observes that said notification issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be followed for claiming as well as sanctioning rebate claims of duty paid on

exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions is to be in order. He does not have the mandate to sanction claim of obviously excess paid duty and then initiate proceeding for recovery of the erroneously paid rebate claim. As such, in the instant case, the adjudicating authority has rightly 'restricted and sanctioned the part rebate claim of duty' in cash as calculated on the FOB value which was determined as transaction value of goods in this case in terms of Section 4 of Central Excise Act, 1944. This aspect has been accepted by the applicant without any objection. Further, the Adjudicating Authority had also rightly held that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and it has to be treated a voluntary deposit with the Government which is required to be returned to the applicants as re-credit. However, the adjudicating authority had allowed the re-credit of the excess duty paid in the cenvat account of the applicant. This part of the order has been challenged by Applicant. The applicant have raised their objection on the manner of allowing re-credit of the excess duty paid by the Adjudicating Authority.

10. In this regard, the Government finds that Hon'ble High Court of Haryana at Chandigarh vide order dated 1-9-2008 in CWP Nos. 2235 & 3358 of 2007, in the case of *M/s. Nahar Industrial Enterprises Ltd. v. UOI* reported as 2009 (235) E.L.T. 22 (P & H) has decided as under :-

"Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash, regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent

in the manner in which it was paid by him initially.

11. In the instant case, Government notes that the impugned goods were cleared for export on payment of duty through the Cenvat Credit Account of the applicant. Government finds that the case laws relied by the applicant are those case where the rebate claims were filed by the manufacturer themselves and the amount was re-credited to their Cenvat account itself. In this case the applicant is the merchant exporter and hence the credit can be re-credited into their account only. Hence the decision of the adjudicating authority and the appellate authority to re-credit the rebate in the applicant's account is appropriate. Therefore, the Government holds that excess duty should be allowed as the re-credit in the Cenvat credit account from which duty was paid.

12. Government also finds that in respect to the excess duty paid amount to be re-credited in the Cenvat account of the manufacturer, Commissioner (Appeals)'s observation in the impugned orders at para 14 is valid, precise and correct, he has observed that:

"14. As per the explanation under Clause (A), under Sec.11B of CEA, 'refund' includes 'rebate' of duty of excise on excisable goods exported out of India. Further as per Sec 11B of Central Excise act, 1944, the eligible amount of refund/rebate shall be granted to the claimant of the refund/rebate. Therefore, sanction of a part of the rebate amount (duty in proportion to the value in excess of FOB value) to the manufacturer of the goods (Natco Pharma Ltd.) when the claim was preferred by the appellant (merchant exporter) is not permissible as per the said provisions of Sec 11B of the CEA. In other words, since the rebate could only be sanctioned to the person who claimed the same, the sanction of the rebate payable as re-credit to the manufacturer (M/s Natco Pharma ltd) did not arise at all".

13. In view of above discussion, Government finds no infirmities in the order passed by the appellate authority and therefore does not find any reason to interfere with or modify the Order in Appeal No. 4 to 6 /2013 (H-III) CE & 8/2014 (H-III) CE dated 28.01.2014 passed by the Commissioner of Central Excise (Appeals-I & III), Hyderabad.

14. The revision application is rejected being devoid of merits.

Shrawan Kumar
6/12/21

(SHRAWAN KUMAR)

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

ORDER No. ~~853~~ 2021-CX (SZ)/ASRA/Mumbai DATED 06.12.2021

To

M/s Ranbaxy Laboratories Limited,
Industrial Area No. 3, A.B. Road,
Dewas (MP) - 455 001

Copy to :

1. The Chief Commissioner of CGST, Hyderabad Commissionerate, GST Bhavan, Opposite L.B. Stadium, Basheerbagh, Hyderabad- 500 004.
2. The Commissioner of CGST & Central Excise (Appeals), GST Bhavan, Opposite L.B. Stadium, Basheerbagh, Hyderabad- 500 004.
3. The Deputy Commissioner, CGST, CLS Building, Abids, Nampally Station Road, Hyderabad.
4. Sr P.S. to AS (RA), Mumbai.
5. Guard File.
6. Notice Board