REGISTERED SPEED POST AD

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. 198/167-219/2018-RA /229 Date of Issue: 19.01.22

ORDER NO. 9-62/2022-CX (WZ)/ASRA/MUMBAI DATED 17.01.2022 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 : The Commissioner of CGST & Central Excise, Mumbai East

Respondent : M/s Cipla Ltd.,
Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 018

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PK/441-493/ME/2018 dated 29.05.2018 passed by the Commissioner of CGST & Central Excise(Appeals-II), Mumbai.

ORDER

These revision applications have been filed by Commissioner of CGST & Central Excise, Mumbai East(hereinafter referred to as "the applicant") against Order-in-Appeal No. PK/441-493/ME/2018 dated 29.05.2018 passed by the Commissioner of CGST & Central Excise(Appeals-II), Mumbai in respect of M/s Cipla Ltd., Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 018(hereinafter referred to as "the respondent").

2. The respondent had filed 773 rebate claims totally amounting to Rs. 20,31,86,333/- and the entire amount was sanctioned in cash by the adjudicating authority. In 53 rebate claims, central excise duty of Rs. 1,03,93,741/- had been paid on an amount in excess of the FOB value of the exported goods. The Department filed appeal before the Commissioner(Appeals) on the ground that the rebate sanctioning authority had erred in sanctioning rebate over and above the duty payable on FOB value declared by the exporter and that the excess amount sanctioned was to be rejected and lapsed as per the first proviso to Section 142(3) of the Central Goods and Services Tax Act, 2017.

3. The Commissioner(Appeals) noted that the provisions of Section 142(4) of the Central Goods and Services Tax Act, 2017 are the express provisions for refund of duty or tax paid on goods or services exported. He concluded that Section 142(3) of the Central Goods and Services Tax Act, 2017 would be applicable only to claims for refund of CENVAT credit and when such claim for refund of CENVAT credit is fully or partially rejected. The Commissioner(Appeals) therefore vide his OIA No. PK/441 to 493/ME/2018 dated 28.05.2018 rejected the appeals filed by the Department and held that the respondent was eligible for the cash refund of excess duty paid by them.

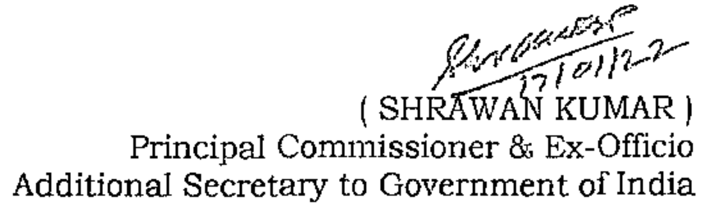
4. The Department found that the OIA No. PK/441 to 493/ME/2018 dated 28.05.2018 was not proper and legal and therefore filed revision application on the ground that the amount of refund claimed over and above

the FOB value is liable to be rejected and such amount would lapse in terms of the proviso to Section 142(3) of the Central Goods and Services Tax Act, 2017.

5. Government has carefully gone through the impugned OIA, the written submissions filed by the respondent and their submissions at the time of personal hearing. The issue involved in this case is whether the provisions of Section 142(3) of the CGST Act, 2017 or the provisions of Section 142(4) of the CGST Act, 2017 would be applicable to central excise duty paid on the amount in excess of the FOB value of the exported goods. The Department contends that the excess central excise duty paid on the exported goods would be refundable as CENVAT credit and that such amount would lapse in view of the provisions of Section 142(3) of the CGST Act, 2017. On the other hand, the respondent and the lower appellate authority are of the view that Section 142(4) of the CGST Act, 2017 would be applicable and that the central excise duty paid on the amount in excess of FOB value on the exported goods would be refundable in cash.

6. Government has consistently held that the excess duty paid on exported goods is not rebatable and such amount is to be refunded in the form in which it was paid into the government account. If the excess duty has been paid from the CENVAT account, such amount was being allowed as re-credit in the CENVAT account. However, with the introduction of Goods and Services Tax, CENVAT credit account has become outdated and allowing re-credit entails interpretation of the Goods and Services Tax Act. It is observed that the grounds for revision are solely restricted to the question of whether the first proviso to Section 142(3) of the CGST Act, 2017 would be applicable to excess duty totally amounting to Rs. 1,03,93,741/- refunded in cash. This ground would require interpretation of the provisions of Section 142 of the CGST Act, 2017. The revisionary powers exercised by the Central Government in these proceedings are in terms of Section 35EE of the Central Excise Act, 1944 and within the framework of the Central Excise Act, 1944.

7. The relief sought by the Department through these revision applications can be obtained only from authorities empowered under the CGST Act, 2017. The revision applications filed by the Department are therefore dismissed as non-maintainable.



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

ORDER No. 9-62/2022-CX (WZ) /ASRA/Mumbai DATED 17.01.2022

To,
M/s Cipla Ltd.
Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 018
Copy to:

1) The Commissioner of CGST & CX, Mumbai East
2) The Commissioner of CGST & CX, Mumbai(Appeals-II)
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file