

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. 195/130/14-RA

14622

Date of Issue:

07.10.2022

ORDER NO. 932/2022-CX (WZ)/ASRA/MUMBAI DATED 30.9.2022 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.

Subject : - Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No.
PD/20/MI/2014 dated 27.01.2014 passed by the
Commissioner of Central Excise (Appeals-I) - Mumbai.

Applicant : - M/s Uniworld Pharma Pvt. Ltd.

Respondent: - Commissioner of CGST & CX , Mumbai South.

ORDER

This Revision application is filed by M/s. Uniworld Pharma Pvt. Ltd., situated at 12, Gunbow Street, Fort, Mumbai 400001 (hereinafter referred to as 'applicant') against the Order-in-Appeal No. PD/20/MI/2014 dated 27.01.2014 passed by the Commissioner of Central Excise (Appeals-I) - Mumbai.

2. Brief facts of the case are that the applicant had filed twenty rebate claims amounting to Rs. 4,00,328/- for the goods stated to have been cleared for export from the factory of M/s Cipla Ltd., situated at Kumrek, Rangpo, East Sikkim, who were availing area based exemption under Notification No. 56/2003-Central Excise, dated the 25th June, 2003 as amended. The Adjudicating Authority vide OIO No. KII/434-R/2013(MTC) dated 12.06.2013 had rejected their rebate claims on the ground that the Notification 19/2004 bars benefit of rebate claims in case when the area based exemption under notification 56/2003 dated 25.06.2003 has already been taken. Being aggrieved by the aforesaid Order in Original, the respondent filed appeal before the Commissioner of Central Excise (Appeals-I) – Mumbai, who vide Order-in-Appeal No. PD/20/MI/2014 dated 27.01.2014 rejected the appeal and upheld the OIO.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision application mainly on the following common grounds:

- i. In this case, at the time of removal of said goods neither manufacturer nor merchant exporters had facility of B-1 bond to clear the said goods for export without payment of duty. Therefore, the payment of excise duty was the only option available with them to discharge the obligation of excise duty. Hence, the said consignment cleared for export on payment of excise duty under claim of rebate.
- ii. Further, the Notification No. 37/2007 CE (NT) dt. 17.09.2007 has amended the Notification No. 19/2004-CE (NT) dt. 6.9.2004. Vide this notification the Board has clarified that the rebate shall not be admissible under Notification No.19/2004-CE (NT) dt 6.9.2004 to the manufacturer availing area-based exemption. However, the said Notification does not speak about the merchant exporter, who procures goods from manufacturer availing area-based exemption.

- iii. Also, the Hon'ble Supreme Court has dismissed the civil petition no.13935-13936 of 2010 filed by Union of India against and order in special civil application nos. 12638 & 12639 of 2008 of Gujarat High Court. In this order Gujarat High Court held that, rebate was admissible to unit availing area based exemption in Kutch for the period 8.12.2006 to 17.09.2007. Copy enclosed as Annexure-4 The court held that C.B.E.C. Circular dated 8.12.2006 clarifying that duty paid being refunded to unit availing such exemption, rebate was not payable had the effect of nullifying Notification No.19/2004-CE (NT) dt 6.9.2004 on rebate and the same was not permissible. It noted that Notification No.19/2004-CE (NT) was amended by Notification No.37/2004-CE (NT) dt 17.09.2007 placing bar on rebate in such cases and such Notification did not mention any retrospective applicability and such application was not legally permissible. When the matter was initiated by Union of India, the exporter who enjoyed double benefit was manufacturer exporter and not merchant exporter. We respect the decision of Hon'ble Supreme Court, but there is no provision given in this decision for merchant exporter, therefore, we are entitled for Cenvat of excise duty.
- iv. Therefore, in this matter, we would like to rely on Order No. 1318-1329/2013-Cx DT. 15.10.2013 passed by your office. Vide this order your office has held that, "The excess paid amount may be allowed to be re-credited in the cenvat credit account of the concerned manufacturer subject to the compliance of the provision of Section 12B of Central Excise Act, 1944" Copy of order enclosed as Annexure- 5. However, in our case there is dispute in actual export of duty paid goods; Hence, in this matter, we hereby request you to allow the Cenvat credit at our manufacturer end under the provision of section 12B of Central Excise Act, 1944. Though, in this case, the said manufacturers have charged excise duty to us, now we have recovered the said excise duty from them by issuing debit note. We enclosed herewith declaration stating the same from our side as well as from said manufacturer as Annexure-6. Whereas, in few cases they have not charged excise duty to us. We enclosed herewith all copies of job work bill and debit note as Annexure 7. Hence, Cenvat credit as per proviso of section 12B should be allowed to our manufactures end and rejection of claim on said ground will be injustice to us.
- v. In view of the above, the applicant requested to

- a) set aside the impugned Order-In-Appeal dated 27.01.2014 passed by the Commissioner (Appeals) of Central Excise, Mumbai Zone 1;
- b) set aside the impugned Order-In-Original dated 12.06.2013 passed by the Deputy Commissioner of Central Excise, Mumbai I;
- c) give direction to sanction the rebate claim by way of Cenvat Credit;
- d) pass such other order or orders as may be deemed fit and proper in facts and circumstances of the case.

4. Personal hearing in this case was scheduled on 25.02.2020, 03.03.2020, 11.02.2021, 25.02.2021, 02.02.2022 and 09.02.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Orders in Original and Orders-in-appeal.

6. Government observes that the issue to be decided in the present case is whether the applicant is entitled for the rebate of duty paid on the goods exported in terms of Notification No.19/2004-CE (NT) when the manufacturer has availed the benefit of area-based exemption under notification 56/2003 dated 25.06.2003.

7. Government here reproduces the relevant text of Notification No. 37/2007 CE (NT) dt. 17.09.2007:

" (h) that in case of export of goods which are manufactured by a manufacturer availing the notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99- Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99- Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No.57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or

notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R.717 (E), dated the 9th September, 2003] or No. 20/2007- Central Excise, dated the 25th April, 2007 [G.S.R. 307(E), dated the 25th April, 2007], the rebate shall not be admissible under this notification.”

From the above it is unambiguously clear that the goods which are manufactured by the manufacturer availing the benefits of notifications 56/2003-Central Excise, dated 25.06.2003 and subsequently exported shall not be admissible for rebate. Applicants argued that in absence of mentioning of merchant exporter in the notification, the rebate cannot be denied to them. Government notes that in order to claim rebate as per notification 19/2004-CE(NT), whosoever be the exporter, but the goods which are being exported must not be manufactured by the manufacturer who avails benefit of notification 56/2003. Contrary to that, in the present case, manufacturer had availed area-based exemption under Notification No. 56/2003. Therefore, the rebate cannot be allowed to the applicant as per the aforesaid notification which is explicit and clear. The judgement of Gujrat High Court cited by the applicant is not applicable in the instant case as the case was regarding whether the amendment in notification 19/2004 shall have retrospective effect or not.

8. Applicant further argued that cenvat credit shall be allowed to their manufacturer under the provision of section 12B of Central Excise Act, 1944 by relying on the GOI Order No. 1568-1595/2012-CX dated 16.11.2012, since they have recovered the excise duty paid on the exported goods from their manufacturer by issuing debit note. Case relied upon by the applicant is different from the case in hand. The case as relied by the applicant pertains to the recredit of amount paid in excess to the eligible rebate claim but in the present case entire rebate is not allowed at all. It is further observed that the applicant has already recovered the duty on his exports from the manufacturer. Therefore, Government is of the view that applicant can not plead on behalf of his manufacturer.

9. In view of above discussions, Government upholds the Order-in-Appeal No. PD/20/MI/2014 dated 27.01.2014 passed by the Commissioner of Central Excise (Appeals-I) - Mumbai.

10. Revision application is disposed off on the above terms.

Shrawan
30/9/22

(SHRAWAN KUMAR)

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

ORDER No. 932/2022-CX (WZ) /ASRA/Mumbai Dated 30.9.2022

To,

1. M/s Uni World Pharma, 12, Gunbow Street, Fort, Mumbai-400 001.
2. The Commissioner of CGST, Mumbai South Commissionerate, Air India Building, Nariman Point, Mumbai 400021.

Copy to:

1. The Commissioner of CGST, Mumbai (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, 400 012.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.