



सत्यमेव जयते

**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.195/30/16-RA

4691

Date of Issue: 11.10.2022

ORDER NO. 955/2022-CX (WZ) /ASRA/Mumbai DATED 07.10.2022 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,
ACME Plaza, Andheri – Kurla Road,
Andheri (E), Mumbai – 400 059.

Respondent : Commissioner of Central Excise, Raigad
Commissionerate.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal no.
CD/850/RGD/2015 dated 01.12.2015 passed by the
Commissioner (Appeals), Mumbai Zone – II.

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 01.12.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone - II, which decided an appeal filed by the applicant against the Order-in-Original dated 31.03.2015 passed by the Additional Commissioner, Central Excise, Raigad Commissionerate, which in turn confirmed a demand of Rs.2,74,052/-, raised on the applicant seeking to recover rebate which was alleged to have been erroneously refunded to them.

2. Brief facts of the case are that the respondent filed rebate claim for Rs.2,74,052/- under Rule 18 of the Central Excise Rules, 2002 in respect of goods exported by them vide ARE-1 No.70 dated 19.05.2011, along with several other claims. The chronology of events that followed are detailed below:-

- The rebate claims, including the one covered by ARE-1 No.70, were sanctioned by the original rebate sanctioning authority vide Order-in-Original dated 20.03.2012; part of it was appropriated towards outstanding dues and the rest was disbursed to the applicant;
- Department preferred an appeal against the Order 20.03.2012 sanctioning the rebate in respect of one ARE-1, on the grounds that the said ARE- 1 indicated the Central Excise registration number and name of the exporter as "M/s Sun Pharmaceutical Industries Limited 100% EOU" and not the name of the applicant;
- The applicant too filed an appeal against the said Order-in-Original dated 20.03.2012 before the Commissioner (Appeals) challenging the appropriation ordered by the rebate sanctioning authority;

- The appeal of the Department against the Order-in-Original dated 20.03.2012 was allowed by the Commissioner (Appeals) vide Order-in-Appeal dated 31.12.2012;
- The applicant preferred a Revision Application against the said Order-in-Appeal dated 31.12.2012 before the Revisionary Authority, which the applicant has submitted, is still pending decision;
- In the meanwhile, a Show Cause Notice dated 31.08.2012 was issued to the applicant seeking to recover the amount of Rs.2,70,674/- erroneously refunded to the applicant;
- The Additional Commissioner, Raigad Commissionerate vide Order-in-Original dated 31.03.2015 confirmed the demand raised on the applicant and ordered recovery of the amount involved;
- The applicant preferred an appeal against this Order-in-Original dated 31.03.2015 before the Commissioner (Appeals); the same was rejected by vide Order-in-Appeal dated 01.12.2015 on the grounds that the issue involved stood decided vide Order-in-Appeal dated 31.12.2012, wherein the applicant was directed to pay back the said amount along with interest, and that the Order-in-Original dated 31.03.2015 of the Additional Commissioner was based on the said Order-in-Appeal;
- The applicant has preferred the subject Revision Application against the said Order-in-Appeal dated 01.12.2015.

3. The applicant has filed the subject Revision Application on the following grounds:-

- (a) The Commissioner (Appeals) had not provided any evidence or proof to support his findings and had passed a non-speaking Order-in-Appeal without understanding the factual position of the applicant and by merely relying on previous OIA passed in the parallel litigation;
- (b) That they had filed Revision Application before the Hon'ble Joint Secretary, Government of India, New Delhi against the Order-in-Appeal dated

31.12.2012 and hence the said Order had not attained finality yet and therefore the present litigation was premature and sub judice; that in an identical matter for earlier period the Hon'ble Government of India had allowed the Revision Application filed by them vide Final Order No. 362-364/14/CX dated 26.11.2014; that the said Order was squarely applicable to the instant case;

(c) The Commissioner (Appeals) had failed to understand that the Domestic division of the applicant having their manufacturing premises at Plot No. A 7 & 8, MIDC, Ahmednagar 41411 had made the payment of duty which was reflected in their Excise invoice, ARE-1 and ER-1 Return;

(d) The Commissioner (Appeals) had erred in ignoring the fact that goods were cleared from the place of job worker under the permission granted by Assistant Commissioner of Central Excise & Customs, Ahmednagar, who was having jurisdiction over Domestic unit as well as EOU (Job Worker) and it was clearly mentioned on the ARE-1 No. 70/10-11 dated 19.05.2010 that goods are manufactured and cleared under the claim of rebate and under DFIA scheme and same was countersigned by Central Excise Officer; that the Commissioner (Appeals) ought to have appreciated that Shipping Bills had been filed under DFIA scheme and the same had been assessed by the Customs Officer and that the Shipping bill clearly indicated that the invoice and ARE-1 were of the DTA unit;

(e) That the observation of the Department was completely wrong and non-factual, as in Col. 1 of ARE-1, Registration No. of DTA unit was mentioned; that name of both the Units (DTA & EOU Job worker) had been mentioned and submitted copies of the registration certificates of both the units;

(f) The Department had stated that the invoice under Rule 11 of Central Excise Rules 2002 was signed by the authorized signatory of M/s. Pharmaceutical Industries Ltd., 100% EOU; whereas the Excise Invoice & Customs Invoice has been signed by the authorized signatory of the DTA unit Mr. Suraj Bandekar on behalf of DTA unit and the ARE-1 had been signed by the authorized signatories of both the Units;

(g) The Additional Commissioner and Commissioner (Appeals) ought to have appreciated that, it was an undisputed fact that such goods so manufactured and cleared for exports against ARE-1 from the place of EOU i.e. job worker had been recorded in Daily Stock Account maintained by DTA unit in accordance with Rule 10 of Central Excise Rules, 2002; that thereafter, export was made from the job worker's place, in accordance with Rule 16A

and Rule 168 of Central Excise Rules, 2002, where permission for finished goods to be removed on payment of duty or without payment of duty for exports from other registered premises was allowed and also permitted by Assistant Commissioner of Central Excise;

(h) The Commissioner (Appeals) had failed to appreciate the fact that duty had been paid by the DTA unit and reflected in CENVAT Credit register and that the same was also appearing on ARE 1; and hence, the allegation made by the Department that goods had been manufactured by a 100% EOU and cleared for export on payment of duty by 100% EOU was totally wrong and incorrect.

In view of the above, the applicant prayed that the impugned Order-in-Appeal dated 01.12.2015 be set aside.

4. Personal hearing in the matter was held on 25.08.2022 and Ms Mithila Shelar, Advocate appeared online on behalf of the applicant and reiterated their earlier submissions. On being asked as to how Cenvat of DTA unit had been used for payment of duty on goods manufactured in the EOU and exported, she submitted that the exporter was the DTA unit and the EOU was only a job worker.

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 entire issue involved in the present case stems from the Order-in-Appeal dated 31.12.2012 wherein the Commissioner (Appeals) had allowed the appeal of the Department which had sought to set aside the Order of the original authority sanctioning the rebate of Rs.2,70,674/-. Consequently, the Notice seeking to recover the said amount was confirmed by the Additional Commissioner vide Order-in-Original dated 31.03.2015 and the same was upheld by the Order-in-Appeal dated 01.12.2015 against which the subject Revision Application has been filed. Government finds that the applicant had submitted before the lower authorities that they had filed a Revision Application against the Order-in-Appeal dated 31.12.2012, however, the same did not come to their rescue, as the lower authorities observed that there was no stay on the operation of the Order-in-Appeal dated 31.12.2015. Government notes that the applicant,

during these proceedings too, have submitted that the Revision Application filed by them against Order-in-Appeal dated 31.12.2012 is pending decision.

7. Government finds that the Revision Application filed by the applicant against Order-in-Appeal dated 31.12.2012 has been decided by the Revisionary Authority vide Order No.130/2019-CX(WZ)/ASRA/Mumbai dated 15.10.2019, a copy of which is annexed to this Order. The Revisionary Authority vide the said Order had set aside the Order-in-Appeal dated 31.12.2012 and remanded the case back to the Commissioner (Appeals) for fresh decision. Government finds that the genesis of this litigation leading to the impugned Order-in-Appeal dated 01.12.2015, is the Order-in-Appeal dated 31.12.2012. Given the fact that the Order-in-Appeal dated 31.12.2012 itself has been set aside, Government finds that the impugned Order-in-Appeal dated 01.12.2015 also will not survive and accordingly holds so.

8. The subject Revision Application is allowed in the above terms.


7/10/22
(SHRAWAN KUMAR)

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

ORDER No. 955/2022-CX (WZ) /ASRA/Mumbai dated 07.10.2022

To,

M/s Sun Pharmaceutical Industries Limited,
ACME Plaza, Andheri – Kurla Road,
Andheri (E), Mumbai – 400 059.

Copy to:

1. Commissioner of Central Goods & Service Tax, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai – 410206.
2. Commissioner (Appeals), Central Excise 7 Service Tax,
3. 3rd floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra Kurla Complex, Bandra East, Mumbai – 400 051.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.