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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 195/386/13-RA/6127 Date of Issue: 31.10.2022

ORDER NO. 995/2022-CX (WZ) /ASRA/MUMBAI DATED 31.10.2022 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Cipla Ltd.
Mumbai Central,
Mumbai 400 008.

Respondent: The Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. BC/417/RGD (R) /2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai -III.

ORDER

This Revision Application has been filed by M/s. Cipla Ltd, Mumbai Central, Mumbai 400 008 (current address 3rd Floor, Raj Plaza, Opp Everest Masala Factory, L.B.S Marg, Vikhroli (West), Mumbai 400 083) (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/417/RGD (R) /2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai -III.

2. The facts of the case in brief are that the applicant is a manufacturer exporter and had filed nineteen rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004 CE (NT) dated 06.09.2004 for the duty paid on goods exported. The rebate sanctioning authority observed that in respect of many rebate claims the applicant had paid Cenvat duty @ 10% advalorem as per Notification No. 2/2008-CE dated 01.03.2008 as amended and claimed rebate of the same instead of paying duty at the effective rate of 5% advalorem prescribed under Notification No. 4/2006-CE dated 01.03.2006 as amended and claiming rebate to that extent only. Also, in respect of some rebate claims, the assessable value on the ARE-1 was found to be more than the corresponding F.O,B values. Thus the rebate sanctioning authority, vide Order-In-Original No. 1317/12-13/DC (Reb)/Raigad dated 14.08.2012 sanctioned the claim to the extent of Rs.16,43,903/- instead of the claimed amount of Rs.31,99,046/-.

3. Aggrieved by the said Order-in-Original, the applicant filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-III who vide Order-in-Appeal No. BC/417/RGD (R) /2012-13 dated 27.11.2012 rejected the appeal and upheld the Order-in-Original dated 14.08.2012.

4. Aggrieved by the impugned Order-in-Appeal, the applicant has filed the Revision Application of the following grounds:

5.1. That it was an undisputed fact that he Notifications No. 2/2008-CE dated 01.03.2008 and Notification No 4/2006-CE dated 01.03.2006 are both in existence simultaneously and do not have any provisions excluding the

other. In other words, Sr. No. 62C of Notification No. 4/2006 does not have any provision stating that the said Notification has an over-riding effect over Notification No. 2/2008-CE dated 01.03.2008 and similarly, vice-versa. Both the Notifications have been issued under Section 5A of the Central Excise Act, 1944;

5.2. That they were entitled to entire refund of duty paid on goods exported as Rule 18 of the Central Excise Rules, 2002, which grants rebate of the excise duty paid on goods exported, states that the rebate would be subject to conditions and limitations, if any and fulfilment of procedures as may be specified. The conditions and procedures to claim rebate are prescribed under Notification No. 19/2004-CE(NT) dated 06.09.2004 and the essential condition prescribed under the said Notification is that the goods shall be exported after payment of duty. In the instant case the fact that the goods which have been exported and have suffered excise duty is also not in dispute;

5.3. That the CESTAT in the case of Gayatri Laboratories vs. CCE [2006 (194) ELT 73 (T)] held that rebate claim to the extent of duty paid was available and that the rebate claim cannot be restricted on the ground that less duty should have been paid in terms of Notification;

5.4. That the method of assessment of excise duty payment on finished goods opted by the applicant was not challenged at any Commissionerate and therefore reassessment of excise duty payment while sanctioning the rebate claim was beyond the scope of the sanctioning authority. The said issue had already been clarified by the Circular No. 510/06/2000-CX dated 03.02.2000, which states as *"There is no question of re quantifying the amount of rebate by the rebate sanctioning authority by reassessment, it is also clarifies that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim";*

5.4. That the goods had been assessed by applying Notification No 2/2008-CE dated 01.03.2008 and the details were informed to the range superintendent and the assessment made by them had not been challenged by the department and that in letter DOF No. 334/1/2008-TRU dated 29.02.2008, at para 2.2 it has been clarified that "*since the reduction in the general rate has been carried out by notification, the possibility of same product/item being covered by more than one notification cannot be ruled out. In such situation the rate beneficial to the assesse would have to be extended if he fulfills the attendant condition of the exemption.*";

5.5. That the excess excise duty had not been collected from the foreign buyer and thus unjust enrichment was not applicable;

5.6. That the issue was already decided vide GOI order No 1568-1595/2012-CX dated 04.11.2012 and the instant matter may be decided accordingly;

5.7. That in the case of exports under 3 ARE-1's , the clearances had been made from their manufacturing unit on correct payment of duty @6% and not 10% and thus there was a short sanction of rebate which may be sanctioned;

5.8. That in the case of clearances under ARE1 No 90/G02/2011 dated 20.06.2011, the rebate sanctioning authority had sanctioned Rs. 47,253/- whereas they were eligible for Rs. 94,498/- @5.15% and the difference may be sanctioned.

6. The applicant vide written submissions dated 28.06.2018 reiterated the facts of the case alongwith the status of various other revisions applications filed by them and case laws in support of their contention

7. Personal hearing in the case was scheduled for 28.06.2018, 21.10.2021, 28.10.2021, 22.03.2022 and 29.03.2022. However, no one appeared before the Revision Authority for personal hearing on any of the

dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has gone through the relevant case records available in case file, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of the records, Government observes that in the instant case, the impugned goods were exported by the applicant and the rebate of Central Excise Duty paid @ 10% adv. as per Notification No 2/2008-CE dated 01.03.2008 was claimed by the applicant. On scrutiny of the impugned rebate claims, the rebate sanctioning authority observed that the effective rate of duty for the said goods cleared for exports was 4% / 5% adv. under Sr. No. 62C of Notification No. 4/2006-CE dated 01.03.2006 as amended by Notification No. 4/2011-CE dated 01.03.2011. The rebate sanctioning authority restricted the rebate claims refundable in cash to Rs.16,43,903/- only. The rebate sanctioning authority also held that as regards grant of cenvat credit of excess duty paid over and above the FOB value, there was no objection to such claims being made with the appropriate jurisdictional authority.

9. Government observes that the issue of payment of duty by the applicant @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 01-03-2006 has been decided by Government of India vide Order No 41-54/2013-CX dated 16.01.2013 holding as under :

> *" there is no merit in the contentions of applicant that they are eligible to claim rebate of duty paid @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5% in terms of Notification No. 4/2006-C.E., dated 1-3-2006 as amended. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/2006-C.E. is to*

be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the case discussed in Para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in Para 8.8.3 above, the excess paid amount is to be returned/adjusted in Cenvat credit account of assesse. Moreover, Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat credit account of the concerned manufacturer".

9.1. Being aggrieved by the decision of the order of Revision Authority, the Commissioner of Central Excise, Mumbai-III also filed Writ Petition No. 2693/2013 before Hon'ble Bombay High Court. Hon'ble Bombay High Court vide Order dated 1711.2014 had dismissed the Writ Petition No. 2693/2103 filed by the Commissioner of Central Excise Mumbai-III holding that

"The direction to allow the amount to be re-credited inthe Cenvat Credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the order in original was modified by the Joint Secretary (Revisional Authority) , what is the material to note is that relief has not been granted in its entirety to the first respondent . The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it.Looked at from any angle, we do not find thatany observation at all has made which can be construed as a positive direction or as a command as is now being understood. It was an observation made in the context of the amounts lying in excess. How they are to be dealt with and in what terms and under what provisions of law is a matter which can be looked into by the Government or eve by the Commissioner who is before us. That on some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto particularly when that it is in favour of the authority. For all these reasons, the Writ Petition is misconceived and disposed of."

9.2. Government also relies on the GOI order No 1568-1595/2012-CX dated 14.11.2012, in respect of the same applicant where, post discussing the issue threadbare , the Revisionary Authority held as under

10.In view of above discussion, Government observes that in the instant cases rebate claims are admissible of the duty paid at effective rate of duty @4% or 5% in terms of Notification No. 4/06-CE dated 1.03.06 as amended on the transaction value of exported goods determined under section 4 of Central Excise Act 1944.. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/06-CE is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex in the case discussed in para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in para 8.8.3 above, the excess paid amount is to be returned / adjusted in cenvat credit account of assessee. Moreover Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat Credit account of the concerned manufacturer. The impugned orders stand modified to this extent".

9.3. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras, Government holds that the applicant is not entitled to rebate of duty paid in excess of duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 01.03.2006 as amended.

10. Government also notes that the amount paid in excess of duty payable on one's own volition cannot be retained by the Government and it has to be returned the manufacturer/applicant in the manner in which it was paid as held by the Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.09.2008 in CWP Nos 2235 and 3358 of 2007, in the case of M/s Nahar Enterprises Ltd vs. UOI (2009(235) ELT-22 (P&H)]. The Hon'ble High Court of Punjab & Haryana had observed that that refund in case of higher duty paid on export product which was not payable, is not admissible and refund of the excess paid duty/amount of cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the applicant in the cenvat credit of the concerned manufacturer subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

11. Government observes that another issue involved in the instant case is of rebate claims filed by the applicant were rejected/restricted on the ground that in some cases the FOB value was less than the assessable value on which duty had been paid and rebate of duty paid on value over and above the assessable value was not admissible as rebate.

11.1 As regards restricting of rebate amount proportionate to FOB value in respect of the rebate claims treating it as a transaction value Government relies on GOI's Order No. 97/ 2014-Cx dated 26.03.2014 In re: Sumitomo Chemicals India Pvt. Ltd.[(2014(308) E.L.T. 198(G.O.I.)]. In the said order, Government discussed the provisions of Section 4(1)(a) of Central Excise Act, 1944, Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as well as the definitions of 'Sale' and 'Place of Removal' as per Section 2(h) and Section 4(3)(c)(i), (ii), (iii) of Central Excise Act, 1944 respectively, and observed as under:

> *"it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 4 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. It can either be factory, warehouse or port/Customs Land Station of export and expenses of freight/insurance etc. incurred upto place of removal form part of assessable value. Under such circumstances, the place of removal is the port/place of export since sale takes place at the port /place of export."*

11.2 At para 9 of the said Order, GOI held as under

> *"9. Government notes that in this case the duty was paid on CIF value as admitted by applicant. The ocean freight and insurance incurred beyond the port, being place of removal in the case cannot be part of transaction value in*

terms of statutory provisions discussed above. Therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied. Applicant has contended that if rebate is not allowed then the said amount may be allowed to be re-credited in the Cenvat credit account. Applicant is merchant-exporter and then re-credit of excess paid duty may be allowed in Cenvat credit account from where it was paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944".

12. As discussed in the foregoing paras, Government therefore, holds that the excess duty paid by the applicant in both the issues, viz. duty paid in excess of the duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 01.03.2006 as amended and over and above the FOB value are to be treated as voluntary deposit with the Government and the Government cannot retain the said amount without any authority of law and has to be re credited in the Cenvat Credit account of the applicant/manufacturer subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

13. Government observes that the applicant in the Revision Application has submitted that in respect of RC No. 5260 (ARE 1 No 433/G08/2011 dated 30.03.2012), RC No. 5261 (ARE 1 NO. 419/G08/2011 dated 26.03.2012) and RC No. 5985 (ARE 1 No 386/G07/2011 dated 17.03.2012) the goods were cleared from their own manufacturing unit after paying duty the prevailing rate of 6% but the rebate original sanctioning authority had sanctioned the rebate claim @ 5% and thus rebate was short sanctioned to the extent of 1%. The applicant further submitted that in respect of RC No. 6835 (ARE 1 No 90/G02/2011 dated 20.06.2011, rebate had been short sanctioned to them as they were eligible for Rs. 94,498/- @ 5.15% adv. But the rebate sanctioning authority had sanctioned Rs. 47,253/-. Government notes that the issue pertains to factual mathematical calculations and needs to be verified by the rebate sanctioning authority.

14. In view of the discussion above, Government modifies the impugned BC/417/RGD (R) /2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai -III and remands the case back to the

original authority for the limited purpose of verification on the applicants claim of short sanction as discussed supra.

15. The Revision Application is disposed of on the above terms.

Shrawan 31/10/22

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

ORDER No 995 /2022-CX (WZ) /ASRA/Mumbai DATED 31 .10.2022

To,
M/s. Cipla Ltd.
3rd Floor, Raj Plaza,
Opp Everest Masala Factory,
L.B.S Marg, Vikhroli (West), Mumbai 400 083.

Copy to:

1. The Commissioner of CGST, Navi Mumbai , 16th Floor, SEC-19D, Palm Beach, Road, Vashi, Navi Mumbai 400 705
2. The Pr. Commissioner of CGST, Belapur, CBD Belapur, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai 400 614
3. The Commissioner of CGST, Raigad Appeals, 5th Floor, C.G.O Complex, CBD Belapur, Navi Mumbai 400 614
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.