



F. No. 198/62/2016-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..12.10.22

Order No. 56/2022-CX dated 12-10-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India; under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. HYD/CEX/004/APP/050/15-16 dated 23.03.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Applicant : Commissioner of CGST & Central Excise, Hyderabad.

Respondent : M/s Vegesna Laboratories Pvt. Ltd., Hyderabad.

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ORDER

A Revision Application No. 198/62/2016-RA dated 14.07.2016 has been filed by the Commissioner of Central Excise, Hyderabad-IV, presently Commissioner of CGST & Central Excise, Hyderabad, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD/CEX/004/APP/050/15-16 dated 23.03.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 96/R/2015-16 dated 16.04.2015, passed by the Deputy Commissioner of Central Excise, Jeedimetla Division, Hyderabad on an appeal filed by M/s Vegesna Laboratories Pvt. Ltd., Hyderabad (hereinafter referred to as the Respondent).

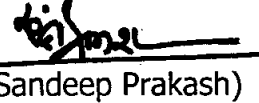
2. Brief facts of the case are that the Respondent herein filed 6 rebate claims, under Rule 18 of the Central Excise Rules, 2002, in respect of Central Excise duty paid for supplies made to the SEZ Unit, for a total amount of Rs. 38,20,786/-. The original authority observed that the duty payable worked out to Rs. 36,28,402/-. Accordingly, rebate claim was sanctioned, in cash, for the said amount of Rs 36,28,402/- whereas balance amount of Rs. 1,92,384/- was allowed as a credit in the CENVAT credit account. On an appeal filed by the Respondents herein, the Commissioner (Appeals) allowed the rebate of the balance amount of Rs. 1,92,384/- also in cash.

3. The Revision Application has been filed, mainly, on the grounds that the Range Officer arrived at the Section 4 value by comparing the ARE-1's value with the nearest domestic sale value of the similar goods; that there is no provision for the rebate of excess duty paid in cash; and that, therefore, the Commissioner (Appeals) has erred in allowing the balance amount paid to be rebated in cash.

4. The personal hearing was fixed on 22.06.2022, 21.07.2022, 21.09.2022 and 12.10.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

5. The Government has carefully examined the case. It is observed from the impugned Order-in-Appeal that the Respondent herein had not challenged the re-determination of value, on merits, but had pointed out that they had closed their factory in Hyderabad and, therefore, the entire amount of duty paid may be either allowed in cash or, alternatively, they may be allowed to avail CENVAT credit at their Visakhapatnam Unit. It is further observed that the re-determination of value was made after comparison with the domestic sales and the duty paid on supplies made to the SEZ Unit was found in excess as corresponding value was on a higher side. The Government finds that the Hon'ble Punjab and Haryana High Court has, in the case of Nahar Industrial Enterprises Ltd. vs. Union of India {2009 (235) E.L.T. 22 (P&H)}, held that where an assessee paid lesser duty on domestic product and higher duty on export product, which was not payable, the assessee is not entitled to refund thereof in cash and, for balance, refund by way of credit is appropriate. This Order of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court {2022 (380) E.L.T. (S.C.)}. Therefore, the impugned order of Commissioner (Appeals) cannot be sustained.

6. In view of the above, the Revision Application is allowed and the impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner CGST & C. EX.,
Hyderabad Commissionerate, GST Bhawan,
Opp. LB Stadium, Basheerbagh,
Hyderabad-500004.

G.O.I. Order No. 56/22-CX dated/2-10-2022

Copy to:

1. M/s Vegesna Laboratories Pvt. Ltd. Plot No. 34/4, S.V. Co-op, Industrial Estate, Jeedimetla, Hyderabad-500085.
2. The Commissioner of Customs & Central Excise (Appeals), 7th Floor, GST Bhawan, Opp. L.B. Stadium, Basheerabagh, Hyderabad-500004.

3. PA to AS(RA).
4. Guard file.
5. Spare Copy.

ATTESTED



12.10.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi