

F. No. 195/27/SZ/2018-R.A.
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SPEED POST



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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. 28/2/23

Order No. 58-60/2023-CX dated 27.02.2023 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 Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal No. BW-EXCUS-000-APP-081 to 082-17-18 dated 11.12.2017 & No. BW-EXCUS-000-APP-127-17-18 dated 13.02.2018, passed by the Commissioner of Central Tax (Appeals), Mysuru.

Applicant : M/s Parsons Nutritional Pvt. Ltd., Ramanagara (Kar.).

Respondent : The Pr. Commissioner of CGST & Central Excise, Bengaluru (West).

ORDER

Three Revision Applications, bearing Nos. 195/27/SZ/2018-RA and 195/28/SZ/2018-RA, both dated 13.03.2018 & 195/46/SZ/2018-RA dated 13.04.2018 , have been filed by M/s Parsons Nutritional Pvt. Ltd., Ramnagara, Karnatka (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. BW-EXCUS-000-APP-081& 82 -17-18 dated 11.12.2017 & No. BW-EXCUS-000-APP-127-17-18 dated 13.02.2018 , all passed by the Commissioner of Central Tax (Appeals), Mysuru. The Commissioner (Appeals) has, vide impugned Orders-in-Appeal dated 11.12.2017, upheld the Orders-in-Original dated 31.01.2017, passed by the Assistant Commissioner of Central Tax, Kanakpura Division, Bengaluru ,while, vide the impugned Order-in- Appeal dated 13.02.2018, the relevant Order-in-Original dated 05.04.2016 has been set aside. *ky*

2. Brief facts of the case are that the Applicants herein were registered with the department for manufacture of goods under Chapter 19 of the Central Excise Tariff Act, 1985. They had filed 04 rebate claims of central excise duty paid on final products, which were exported through merchant exporter M/s Glaxo Smithkline Consumer Healthcare Limited (referred to as "GSK" in short), in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The details are tabulated as under:

S. No.	R.A. No. & date	O-I-O No. & date	Exports made during	Date of filing of rebate claim	Amount of rebate claimed (in Rs.)	Amt. of Rebate allowed	Amt. of rebate rejected
1.	195/27/SZ/2018 dated 13.03.2018	45/2016-17 dated 31.01.2017	Jan,2016 to Mar,2016	28.07.2016	60,219/-	NIL	60,219/-
2.	195/28/SZ/2019 dated 13.03.2018	46/2016-17 dated 31.01.2017	Apr,2016 to Jul,2016	14.10.2016	44,573/-	NIL	44,573/-
3.	195/46/SZ/2019 dated 13.04.2018	04/2015-16 dated 05.04.2016	Apr ,2015 to May,2015	22.01.2016	42,953/-	42,953/-	NIL
4	195/46/SZ/2019 dated 13.04.2018	04/2015-16 dated 05.04.2016	Apr ,2015 to May,2015	22.01.2016	24,941/-	24,941/-	NIL

Rebate claims filed by the applicants herein and thereafter dealt in OIO Nos. 45/2016-17 & 46/2016-17, both dated 31.01.2017 were rejected by the original authority on the ground that the

Applicants herein had collected refundable advances from GSK with an understanding that once they receive the rebate from the department, the amount shall be refunded to GSK. It was also held that there is no disclaimer certificate from GSK and the amounts of duty shown in invoices were charged and collected from GSK and, therefore, the burden of duty incidence having been passed on by the applicants herein, the doctrine of unjust enrichment will apply. Rebate claims of Rs. 42,953/- and Rs.24,941/- were dealt together in OIO No. 04/2015-16 dated 05.04.2016 and the original authority sanctioned the same. Aggrieved with OIO Nos. 45/2016-17 & 46/2016-17, both dated 31.01.2017, the Applicants herein preferred appeals with Commissioner (Appeals) which were rejected vide OIA No. BW-EXCUS-000-APP- 81 to 82-17-18 dated 11.12.2017. The department (hereinafter referred to as Respondent) also filed an appeal against OIO No. 04/2015-16 dated 05.04.2016, which was allowed vide OIA No. BW-EXCUS-000-APP-127-17-18 dated 13.02.2018.

3. The Revision Applications have been filed, mainly, on the grounds that principle of unjust enrichment is not applicable in the case of export of goods; that the Applicants had not passed on incidence of duty; and that rebate claim is not required to be filed only by the actual exporter.

4. Personal hearing in the matter was held, in virtual mode, on 17.02.2023. Sh. Mohammad Ibrahim, Advocate appeared for the Applicants and requested that Synopsis and compilation emailed on 09.02.2023 may be taken on record. He reiterated the contents of the respective RA, and highlighted that by virtue of S.11B (2) of the Central Excise act,1944, the doctrine of unjust enrichment does not apply to rebate claims in respect of export of goods. In any case, in the subject cases, the Chartered accountant has certified that the incidence of duty paid has not been passed on to the merchant exporter. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The Applicants were manufacturing biscuits, which were being exported by M/s Glaxo Smithkline Consumer Healthcare Ltd. (GSK), as a merchant exporter. As per the contractual arrangement between the Applicants and GSK, GSK was advancing refundable advance to the Applicants for payment of excise duty on the exported

biscuits manufactured by the Applicants. The understanding between the Applicant and GSK was that once the rebate claim of duty paid on exported biscuits was received by the Applicant from the department, the said amount shall be refunded to GSK. The Commissioner (Appeals) has held that the department is not concerned with the internal arrangement between the Applicant and GSK that duty amounts shall be refunded by the Applicant to the merchant exporter after they receive the same as rebate. The refundable advances received by the Applicant from the GSK were treated as recovery of the duty paid by the Applicant and it was held that once the duty is passed on to the merchant exporter, the principles of unjust enrichment would apply.

5.2 It is observed that as per the sub-section (2) of Section 11B, if the Assistant Commissioner/Deputy Commissioner is satisfied that whole or any part of the duty paid by the applicant is refundable, the amount so determined shall be credited to the Consumer Welfare Fund. However, as per the first proviso to the said sub-section (2), the amount of duty so determined shall instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- “(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods exported out of India.
- (b)
- (c)
- (d)
- (e)
- (f) ”

Thus, it is clear that rebate claim of duty paid on exported goods is not hit by the doctrine of unjust enrichment.

5.3 The Commissioner (Appeals) has not disputed the statutory position bought out in para 5.2 above but has held that the same is not applicable in the present case as the claimant (i.e. the Applicant herein) is not the exporter. The Government, however, finds that as per sub-section (1) of Section 11B *ibid*, “any person” can claim refund of duty paid. Rule 18 *ibid* and Notfn No. 19/2004-CE(NT) also do not impose any condition that rebate can be claimed only by an actual exporter. As such, it is incorrect to hold that the provisions made in the first proviso to sub-section

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(2) of Section 11B shall be applicable only in the case of claims filed by the actual exporters. Further, in the case of RA No. 195/46/SZ/2018-RA, a Certificate dated 20.12.2016 has been placed on record wherein it is certified that the Applicant herein "has refunded back the 'refundable advance' received by them from GSKCH upon receipt of the refund of the excise duty paid on the exported goods after processing of rebate claims." This substantiates the Applicant's claim that, as per contractual arrangement between them and GSK, the refundable advance received by them from GSK for payment of excise duty was refunded by them to GSK upon receipt of rebate claims. As such, the allegation of passing on the incidence of duty paid by the Applicant to GSK also does not hold.

6. In view of the above, the revision applications are allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s. Parson Nutritional Pvt. Ltd.,
319C,320A & B, 2nd Phase,
Barohalli Industrial Area, Kanakpura Taluk
Ramanagara District-562112

G.O.I. Order No. 58-60/23-CX dated 27.2.2023

Copy to: -

1. The Pr. Commissioner of Central Goods & Services Tax (West), 1st Floor, BMTc Bust stand Building, Banshankri, Bengaluru-560070.
2. The Commissioner of Central Goods & service Tax (Appeals), Mysuru, S-1& S-2, Vinaya Marg, Sidhartha Nagar, Mysuru-570011.
3. M/s Lakshmikumaran & Sridharan, Attorneys, World trade Center, No.404-406, South Wing, Brigade Gateway Campus, No.26/1, Dr.,Rajkumar Road, Malleshwaram West, Bengaluru-560055.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED


27.02.2023
(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

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