

SPEED POST



F. No. 195/25/SZ/2020-R.A.
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. 20/05/24

Order No. 12/2024-CX dated 13-05-2024 of the Government of India, passed by Ms. Shubhagata Kumar, 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 Orders-in-Appeal No. BW-EXCUS-000-APP-SC-71-2019-20 dated 18.02.2020, 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

Revision Application, bearing No. 195/25/SZ/2020-RA dated 15.10.2020, has 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-MS-71-2019-20 dated 18.02.2020, passed by the Commissioner of Central Tax (Appeals), Mysuru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal dated 12.02.2020, upheld the Order-in-Original No. 22/2018-19 dated 26.03.2019, passed by the Assistant Commissioner of Central Tax, Division-7, Bengaluru West Commissionerate.

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 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 Applicants had filed 7 rebate claims for different periods and the claims were sanctioned. The details are tabulated as under:

S. No.	O-I-O No. & date	Exports made during	Date of filing of rebate claim	Amount of rebate claimed (in Rs.)	Amt. of Rebate allowed (in Rs.)	Amt. of rebate rejected
1.	04/2014 dated 30.04.2015	Apr,2014 to Jun,2014	12.12.2014	71,120/-	71,120/-	NIL
2.	05/2014 dated 30.04.2015	Apr,2014 to Jun,2014	12.12.2014	20,800/-	20,800/-	NIL
3.	32/2015-16 dated 16.12.2015	Oct ,2014 to Dec,2014	18.09.2015	3,96,207/-	3,96,207/-	NIL
4	52/2015 dated 28.03.2016	Jan,2015	29.12.2015	6,593/-	6,593/-	NIL
5	01/2016 dated 05.04.2016	Feb,2015	07.01.2016	11,538/-	11,538/-	NIL
6	04/2016-17 dated 05.04.2016	Apr,2015 to Jun,2015	22.01.2016	42,953/-	42,953/-	NIL
7	04/2016-17 dated 05.04.2016	Jul,2015 to Sep,2015	22.01.2016	24,941/-	24,941/-	NIL
	TOTAL				5,74,152/-	

It appeared to the department that the rebate claims filed by the Applicants which were later sanctioned to the Applicant were erroneous as the Applicants had passed on the incidence of duty to GSK and collected the same from GSK. Accordingly, a SCN No. 01/2017 dated 24.04.2017 was issued to the Applicant wherein rebate amounting to Rs.

5,74,152/- sanctioned erroneously to the Applicant was proposed to be demanded and recovered under section 11A (1) of the Central Excise Act, 1944. Interest under Section 11AA was also demanded and penalty under Section 11AC (1) of the act, ibid was proposed. During the adjudication proceedings the applicant contested the demand by submitting that they 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 after due process of law, the lower adjudicating authority vide OIO No. 22/2018-19 dated 26.03.2019 confirmed the demand along with appropriate interest. A penalty of Rs. 57,415/- was also imposed on the applicant under Section 11AC (1) of the act, ibid. The lower adjudicating authority 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. Aggrieved with 22/2018-19 dated 26.03.2019, the Applicants herein preferred appeal with Commissioner (Appeals) which was rejected vide the impugned OIA. During the appellate proceedings

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 and substantive benefits cannot be denied.

4. Personal hearings in the matter was held on 17.01.2024 & 21.02.2024. Sh. Tushar Sharma, Advocate appeared for the Applicants on both of the hearings. On 17.01.2024, Sh. Tushar Sharma submitted that the applicants are manufacturer of biscuits and Glaxo SmithKline (GSK) used to give them an advance which, once rebate was granted, was given back to GSK. Hence, there was no passing on of the incidence of duty and therefore the concept of unjust enrichment does not apply in their case. Further CA certificate has also been provided. On 21.02.2024, Sh. Tushar reiterated his written submissions and the grounds of RA. No one appeared for the Respondent department in either of the personal hearings granted in the matter nor has any request for adjournment been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 At outset it is observed that the impugned OIA was received by the Applicants on 18.02.2020, whereas, the RA has been filed on 15.10.2020 which beyond the period stipulated for filing of revision application. The applicant vide their letter dated 10.04.2024 requested for condonation of delay in light of Hon'ble Apex Court's order dated 23.09.2021, wherein, it was ordered that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing limitation periods. As the period for filing the revision application falls within the time period covered by the Hon'ble Apex Court's order, the delay is condoned.

5.2 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 giving refundable advance to the Applicants for payment of excise duty on the 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. 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. The Commissioner (Appeals) has not disputed the statutory position of Section 11B 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.

5.2.1 In this context, the Government finds that sub-section (1) of Section 11B states that, "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 the final exporter. As such, it is incorrect to hold that the provisions made in the first proviso to sub-section (2) of Section 11B shall be applicable only to claims filed by the final exporters and not to the manufacturers of the export goods, especially when export is not in doubt, as it is the manufacturer who has paid the duty at the time of clearance of the goods. The Government also notes that in the books of accounts of GSK, the amount paid by GSK to the Applicant was shown as 'recoverable' and not credited as payment in the accounts of the Applicant. Further, the recoverable in the books of account of GSK was set off against receipt of refund from the Applicant.

5.2.2 A Certificate from the Chartered Accountant dated 20.12.2016, has also been placed on record, wherein it is certified that the Applicant "*has refunded back the 'refundable advance' received by them from GSK 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 the refundable advance received by them from GSK for payment of C. Excise duty was returned by them to GSK upon receipt of rebate claims. There appears to be no case of retention of the benefit by the applicants since the advance given by GSK to the applicants has been paid by them to the Department and the refund received from the Department has been given back by them to GSK.

5.3 The Government finds that the concept of unjust enrichment has been lucidly explained in several landmark judgments by the Apex Court, e.g. the Hon'ble Supreme Court has, in the case of M/S Sahakari Khand Udyog Mandal Ltd. Vs Commissioner of C. Ex.& Cus. {2005(181) E.L.T.328 (SC)} observed that "*Stated simply, 'Unjust Enrichment' means retention of benefit by a person that is unjust or inequitable. 'Unjust Enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else. The doctrine of unjust enrichment therefore is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of unjust enrichment arises where retention of a benefit is considered contrary to justice or against equity.* In the instant case, it cannot be held that the applicant has unjustly or illegally retained any money or benefit at the expense of GSK, in light of the discussions above. The Applicant has paid the duty and claimed the rebate of duty paid, on goods which have been exported out of the country and the fact of export has not been challenged in the instant case.

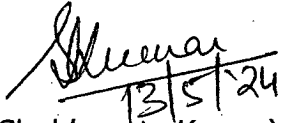
5.4 The Government observes that as per the sub-section (2) of Section 11B, if the Assistant Commissioner/Deputy Commissioner is satisfied that whole or any part of the duty paid by the applicant is refundable, the amount so determined shall be credited to the Consumer Welfare Fund. However, as per the 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. The Commissioner (Appeals) has himself not disputed this statutory provision. Therefore, the impugned OIA is not sustainable and is accordingly set aside.

5.5 It is pertinent to note here that this issue involving the same Applicant has already been decided by this Revisionary Authority on above terms in RA Nos. 195/27/SZ/2018-RA, 195/28/SZ/2018-RA & 195/46/SZ/2018-RA vide Order No. 58-60/2023-CX dated 27.02.2023.

6. In view of the above, the revision application is allowed with consequential relief.


13/5/24
(Shubhagata Kumar)

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. 12/24-CX dated 13-5-2024

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


सरबजीत सिंह / SARABJEET SINGH
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor., B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place,
New Delhi-110066