



F.No. 195/95/2004-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...04/12/24

Order No. 32 /24-CX dated 04-12-2024 of the Government of India passed by Ms. Shubhagata Kumar, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application, filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.89/CE/CHD/03 dated 14.02.2003 by the Commissioner of Central Excise (Appeals), Chandigarh.

Applicant : M/s Glaxo Smithkline Becham Consumer Healthcare, Nabha (Punjab)

Respondent : The Pr. Commissioner of Central Goods & Services Tax, Ludhiana

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ORDER

The present proceedings are in compliance of the order dated 04.09.2023 of the Hon'ble High Court of Punjab and Haryana at Chandigarh, in Civil Writ Petition No. 8357 of 2005, wherein, Order No. 351/04 dated 23.09.2004 passed initially by the Revisionary Authority has been quashed and the subject Revision Application No. 195/95/2004-RA has been remanded back to the Revisionary Authority for deciding afresh. The instant revision application under de-novo consideration was filed by M/s Glaxo Smithkline Becham Consumer Health Care, Nabha, Punjab (hereinafter referred to as the "Applicant") against O-I-A No. 89/CE/CHD/03 dated 14.02.2003 passed by the Commissioner of Central Excise (Appeals), Chandigarh.

2.1 Brief facts of the case are that the Applicant manufactured "Cereal Malt extract" (DMI-70) and after payment of duty cleared the same to their sister unit M/s Glaxo Smithkline Becham Consumer Health Care, Faridabad, Haryana (hereinafter referred to as "the sister unit at Faridabad"). The sister unit at Faridabad availed Modvat credit of the duty paid by the Applicant during clearance of "Cereal Malt extract" (DMI-70). Thereafter, the sister unit at Faridabad exported the "Cereal Malt extract" (DMI-70) to Sri Lanka under bond vide AR-4 Nos. 4/95 to 12/95.

2.2 Meanwhile Central Excise Authorities, Faridabad observed that "Cereal Malt extract" (DMI-70) received by M/s Glaxo Smithkline Becham Consumer Health Care, Faridabad, Haryana was neither an input nor the final product for the sister unit at Faridabad and the same was cleared as such for export, therefore the Modvat credit availed by the sister unit at Faridabad was inadmissible and irregular and was recoverable from them under Rule 57(I)(1) of the erstwhile Central Excise Rules, 1944. Accordingly, for the period 01.03.1995 to 09.08.1995, a show cause notice dated 04.10.1995 was issued to the sister unit at Faridabad wherein a demand of Rs. 15,70,126.71 was raised. Another show cause notice dated 07.03.1996 for the period 10.08.1995 to 31.12.1995 was also issued wherein a demand of Rs.2,76,357/- was raised. Both the show cause notices were jointly adjudicated by the Commissioner of Central Excise, New Delhi vide O-I-Os No. 62/96 dated 30.04.1996 and 63/96 dated 30.04.1996 respectively and the demands were confirmed. During the adjudication proceedings, the sister unit at Faridabad contended that the amount of duty paid on DMI-70 at the Nabha factory by the Applicant was available to them as rebate under Rule 12 of the Central Excise Rules, 1944. On this contention, the Commissioner of Central Excise, New Delhi held that "*They say that in any case they are entitled to rebate under Rule 12 of the Central Excise Rules,*

1944. This claim is not valid for their Faridabad unit. The rebate has to be claimed where the duty is paid."

2.3 The Applicant thereafter filed rebate claims dated 17.05.96 amounting to Rs.18,03,484/- with the office of Assistant Commissioner of Central Excise, Patiala Division. The Patiala Division returned the rebate claims to the Applicant vide letter dated 06.09.1996, vide which the applicant was directed to file the rebate claims with the Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse from where the goods were cleared for export.

2.4 Since the goods were exported from Faridabad, the sister unit at Faridabad filed 9 rebate claims dated 06.11.1996 with the office of Assistant Commissioner of Central Excise, Division-II, Faridabad for Rs. 18,03,484/- pertaining to the export of "Cereal Malt extract" (DMI-70) to Sri Lanka. The Assistant Commissioner of Central Excise, Division-II, Faridabad held that they have no jurisdiction to entertain the rebate claims filed with them for want of jurisdiction/powers under Rule 189 of the erstwhile Central Excise Rules, 1944.

2.5 Accordingly, the Applicant again filed the rebate claims with the Central Excise Division, Patiala. The said rebate claims were rejected for want of jurisdiction as the credit availed in respect of the Applicant unit at Nabha was reversed by the Faridabad unit and the goods were exported from the unit at Faridabad under bond without payment of duty. A Show Cause Notice was issued to the Applicant which was adjudicated vide O-I-O No. 366/AC/Rfd/97 dated 11.12.1997 in which the rebate claims were rejected and the Applicant was once again requested to file the claim with the appropriate authority at Faridabad. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide O-I-A 892/CE/CHD/2K dated 26.04.2000 finally directed that the rebate claim of the Applicant was to be decided by the Assistant Commissioner, Central Excise Division-Patiala, as the Applicant unit fell under his jurisdiction.

2.6 Thereafter, the Applicant vide their letter dated 23.08.2000 re-filed their rebate claims with the Assistant Commissioner, Central Excise Division-Patiala. After the due course of proceedings, the rebate claim of the Applicant was finally decided vide O-I-O No. 49/CE/AD/R/T-II/PTA/2001 dated 24.08.2001 passed by the Deputy Commissioner, Central Excise Division-Patiala. The original adjudicating authority recorded the following in the O-I-O: -

(i). As per the documentary evidence available with this office, the goods were originally cleared by the Applicant unit to their Faridabad unit for home consumption.

(ii). *It is on record that the goods cleared by the Applicant unit to their Faridabad unit for home consumption were subjected to test at Faridabad for which the bags were opened by the technical staff as well as an outside agency.*

(iii). *In the absence of any evidence adduced by the party, it cannot be concluded that the goods exported to Sri Lanka by the Faridabad unit were the same which were cleared on payment of duty by the Applicant unit.*

(iv). *The export had taken place from Faridabad to Sri Lanka under Bond, without payment of Central Excise duty. Since no duty was paid on the goods by the exporter, there is no question of claiming rebate of duty paid thereon.*

In light of the above findings, the original authority rejected the rebate claim of Rs.18,03,484/- filed by the Applicant.

2.7 Aggrieved with the O-I-O passed by the original authority, the Applicant once again filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned O-I-A No.89/CE/CHD/03 dated 14.02.2003, ordered as follows:

"From the foregoing facts, it cannot be said that the goods exported from Faridabad unit were the same which were cleared by the Applicant unit. Accordingly, I reject the rebate claim of the party as the goods were exported without payment of Central Excise duty from Faridabad. The invoices issued by the Applicant unit indicate the removal of goods for home consumption to their Faridabad unit. Since no duty has been paid on exported goods, no rebate claim is due to the party."

Accordingly, Commissioner (Appeals) upheld the O-I-O passed by the original authority and dismissed the appeal.

2.8 Aggrieved, the applicant filed an appeal E/A no. 967/03-NB (C) with the Hon'ble CESTAT. The said appeal filed by the Applicant was finally decided by the Hon'ble CESTAT vide Final order No. 255/04-NBC dated 18.03.2004, wherein, the appeal was dismissed as not maintainable. However, the Hon'ble CESTAT also ordered that *"The central Government may consider the fact that the appellants were pursuing their appeal in this Tribunal and this period may not be counted for the purpose of delay in filing the revision application"*.

2.9 Thereafter, the Applicant filed the revision application with the Central Government on 16.03.2004. Government of India vide Order no. 351/04 dated 23.09.2004 rejected the revision application as time barred without going into the merits of the case by holding that *"The Applicants have admitted delay in filing the revision application and given reason of the delay is due to pursuing of the issue before Hon'ble CEGAT. On the ground, Government would observe that the Applicants have not given convincing reason for pursuing the matter before the Hon'ble CEGAT in patent contravention of the direction*

given in para 4 of the preamble attached to the impugned O-I-A. In these circumstances Government is compelled to reject the revision application as time barred as the same has been filed beyond the prescribed time limit under the statute”.

2.10 Aggrieved with the above-mentioned order of G.O.I, the applicant filed Civil Writ Petition No. *CWP-8357-2005 (O&M)* with the Hon'ble Punjab and Haryana High Court. The Hon'ble High Court vide its order dated 04.09.2023 held that *"The respondent No.1 revision authority completely ignored the time spent by the petitioner before the Tribunal. The observation made by respondent No.1 that as there was a specific recital in the preamble attached with the order in challenge that the petitioner could relegate to revisional authority for its remedy, therefore not resorting to the action of the filling revision application before respondent No.1 amounted to malafide, cannot be accepted in view of the fact that first of all there is nothing on record to show that any such preamble had been attached with the copy of Order dated 14.02.2003, which was supplied to the petitioner and secondly, that even if it was so, still it could not be assumed that the petitioner ignored the said recital due to some malafide. It was not a case when the petitioner was not pursuing any remedy and in our opinion as long as the petitioner bonafidely pursued a legal remedy, then even if the said remedy turned down to be abortive later on, the time taken in pursuing that remedy is to be excluded being jurisdictionally deficient as otherwise the results would be anomalous."*

In light of the above, Order no. 351/04 dated 23.09.2004 passed by the Government of India was quashed, the petition filed by the Applicant before the Hon'ble High Court was allowed and the instant revision application was restored. Revision authority has been directed to decide the application for condonation of delay as well as the revision in accordance with Law.

3. In compliance to the Hon'ble High Court's direction in the judgment cited (supra), fresh personal hearing was granted on 17.01.2024 to the Applicant and Sh. S.C. Vaidyanathan, Advocate appeared for the Applicant and submitted that Glaxo manufactured Malt Food extract (DMI-70) at Galxo's Nabha unit, cleared it upon payment of duty to their Ballabgarh unit for testing and re-packing after which the goods were exported to Sri. Lanka. He contended that the fact of export was not in doubt. The export from the sister unit at Faridabad (Ballabgarh) took place under bond without payment of duty and the sister unit at Faridabad (Ballabgarh) unit availed MODVAT credit for the duty paid by the applicant at Nabha and utilized the same. He sought a decision on merits from RA. No one appeared from the respondent department. Hence, a further

hearing was granted on 14.02.2004 for the respondent department to present their submission. On 14.02.2004, Sh. S.C. Vaidyanathan, Advocate re-appeared for the Applicant, Sh. Satish Kumar, Superintendent and Sh. Birbal Sharma, Inspector appeared for the Respondent department and reiterated the facts of the case that the goods were cleared domestically and not for export; that the identity of the goods was not established beyond doubt; that the export from the sister unit at Faridabad (Ballabhgarh) unit was export under bond and not upon payment of duty, therefore the applicants were not eligible for rebate. Sh. Vaidyanathan in response quoted the jurisdictional Commissioner's letter permitting export on page 59 of the docket which is on record. Applicants and respondents had nothing further to state in the matter.

4. The application has been filed on the grounds that the goods when cleared from Nabha unit were duty paid and thereafter exported from the sister unit at Faridabad under bond. The export of the goods and their duty paid character was undisputed; that the entire quantity of goods cleared from Nabha unit had been exported and they were not diverted domestically; that the order of Commissioner(Appeals) is a non-speaking order in which he had simply reiterated the findings of the original authority; that the finding of the Commissioner (Appeals) that the goods were not exported from Nabha is ex-facie perverse and against the intention of the Government to promote exports; that the Applicant only tested and repacked the goods received from Nabha at the sister unit at Faridabad and this testing and repacking cannot be the ground to allege that the same goods were not cleared for export.

5. At the outset, it is observed that the Hon'ble High Court has directed the Revisionary Authority to first decide upon the issue of delay. The Government observes that there was a delay of 13 months by the Applicant in filing the RA. However, it is also on record that during this period the Applicant was pursuing remedy before a wrong judicial forum i.e. the Hon'ble CESTAT. The Hon'ble CESTAT in its final order No. 255/04-NBC dated 18.03.2004 had specifically directed the revision authority by ordering that "*The central Government may consider the fact that the appellants were pursuing their appeal in this Tribunal and this period may not be counted for the purpose of delay in filing the revision application*". This fact has also been taken into cognizance by the Hon'ble High Court while directing this authority to re-consider the revision application. The Government observes that the delay occurred previously due to the fact that the Applicant was pursuing the matter before the Hon'ble CESTAT without any malafide intention, which the Hon'ble High Court has also recorded in its judgement. The delay is therefore condoned and the case is taken up on merits.

6. The Government has carefully examined the documents placed on the record. The following facts have emerged from the examination and scrutiny of the documents: -

(i). Applicant's Nabha unit manufactured the "Cereal Malt extract" (DMI-70) which was cleared to Applicant's Faridabad plant domestically after payment of duty.

(ii). The Faridabad unit availed Modvat credit of the duty paid by the Nabha unit and utilized the same for payment of duty on other products manufactured at Faridabad unit. It has been claimed that the impugned goods received from the Applicant's unit were later on exported to Sri Lanka.

7. Upon examination of the material on record and the submissions during P.H. the Government finds that the Applicant was not the exporter of the goods for which they claimed rebate. It is an undisputed fact on record that the applicant had cleared goods to their sister concern upon payment of duty which amounts to domestic clearance. The goods were stated to have been exported by their Faridabad unit under bond, but were not manufactured by them and there is also no evidence to establish beyond doubt that the goods exported were identical to the ones received from Nabha domestically, as it is on record that the goods received from Nabha were opened for testing and repacked before export. Had Nabha sent these goods to the sister unit under bond, a claim could have arisen. That is not the case. The Government observes that Notification No. 41/94-C.E. (N.T) dated 12.09.1994 was the relevant notification that regulated rebate at the relevant time, the conditions of which were not met.

7.1.1. The Government observes that it would be prudent to examine the provisions of Notification No. 41/94-C.E. (N.T) dated 12.09.1994 for arriving at a judicious conclusion in the matter. The same is reproduced as under: -

Export — Rebate of duty on export of all excisable goods except mineral oils and ship stores

In exercise of the powers conferred by clause (a) of sub-rule (1) of rule 12 of the Central Excise Rules, 1944, the Central Government hereby directs that rebate of duty paid on the excisable goods as specified in the Table annexed hereto, shall on their exportation out of India to any country except Nepal and Bhutan, be made to the extent specified in column (3) thereof :

Provided that -

(i) the excisable goods shall be exported after payment of duty directly from a

factory or a warehouse;

- (ii) the excisable goods are exported by the exporter in accordance with the procedure set out in Chapter IX of the Central Excise Rules, 1944;*
- (iii) the excisable goods shall be exported within six months from the date on which they were **cleared for export** from the factory of manufacture or warehouse or within such extended period as the Collector of Central Excise may in any particular case allow;*
- (iv) the claim or, as the case may be, supplementary claim, for rebate of duty is lodged with the Maritime Collector of Central Excise or the Collector of Central Excise having jurisdiction over the factory of manufacture or warehouse, as mentioned in the relevant export documents; together with the proof of due exportation within the time limit specified in section 11B of the Central Excises and Salt Act, 1944 (1 of 1944);*
- (v) the market price of the excisable goods at the time of exportation is, in the opinion of the Collector of Central Excise not less than the amount of rebate of duty claimed;*
- (vi) the amount of rebate of duty admissible is not less than five hundred rupees;*
- (vii) the exporter undertakes to refund any rebate of duty erroneously paid, to the Collector of Central Excise sanctioning such rebate in accordance with provisions of section 11A of the Central Excises and Salt Act, 1944 (1 of 1944);*
- (viii) if the excisable goods are not exported or the proof of export thereof is not furnished to the satisfaction of the Collector of Central Excise or, as the case may be, the Maritime Collector of Central Excise in the manner and within the prescribed time limit, the said officer on an application being made by the exporter or otherwise, shall cancel the export documents;*
- (ix) if exported -*
 - (a) by land, the export shall take place by such routes or such land Customs Stations or Border Check Posts as have been approved by the Central Government;*
 - (b) by parcel post, the parcel is delivered by the exporter at the Post Office of dispatch within six months of the payment of duty :*

Provided that rebate of duty paid on those excisable goods, which are prohibited under any law for the time being in force, shall not be made.

Explanation. "Duty" means for the purposes of this notification, duties of excise

collected under the following enactments, namely :-

- (a) the Central Excises and Salt Act, 1944 (1 of 1944);
- (b) the Mineral Products (Additional Duties of Excise and Customs) Act, 1958 (27 of 1958);
- (c) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (d) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (e) Special excise duty collected under a Finance Act.

TABLE

Sl. No.	Excisable goods	Extent of rebate of duty
(1)	(2)	(3)
	<p>All excisable goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except the following goods -</p> <p>(a) mineral oil products falling under Chapter 27 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run;</p> <p>(b) goods exported as ships stores for consumption on board a vessel bound for any foreign port.</p>	Whole

The provisions of the said notification in unambiguous terms stipulate that the rebate of duty paid goods shall be admissible on their exportation out of India except to Nepal and Bhutan and such goods should be exported after payment of duty directly from a factory or a warehouse. Thus, the question that emerges is whether the rebate can be granted when the mandatory conditions stipulated under governing Notification No. 41/94-C.E. (N.T.) (ibid) were not fulfilled.

On this issue, the Hon'ble High Court of Himachal Pradesh in the case of Commissioner of Central Excise, Chandigarh Vs Indian Overseas Corporation 2009 (234) E.L.T.405 (HP) has held that "In the notification of the Central Government issued on 12th September, 1994 it has been clearly laid down that the rebate of duty paid on

excisable goods shall on the export of the goods be allowed only if the excisable goods are exported after payment of duty directly from the factory or warehouse." Further, the Hon'ble High Court also held that *"The law is well settled that when an assessee wants to take benefit of any rebate, he must satisfy all the conditions which are necessary for availing the rebate."*

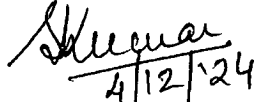
In the instant matter, it is on the record that the Applicants did not export the goods after payment of duty but cleared the same to their Faridabad unit domestically. Therefore, the impugned goods were not cleared directly from the Applicant unit or from Applicant's warehouse but from the sister unit of the Applicant at Faridabad which was a different entity under the Central Excise Act; that too, after they had been opened for testing and repacked. By no stretch of imagination can a separate Central Excise entity be stated to be a "warehouse" of the Applicant. Thus, it is established that the Applicant was never an exporter of the impugned goods which they had cleared domestically to their sister unit at Faridabad.

7.1.2. It has been averred by the Applicants that the impugned goods received by their Faridabad unit from the Applicants were subsequently exported by their Faridabad unit, hence, the duty paid by the Applicant unit should be given back to the Applicants in the form of rebate. On this issue the Government observes that it is on the record that the Faridabad unit of the Applicants initially exported the impugned goods under bond after incorrectly availing the MODVAT credit of the duty paid not by them but by the Applicants. Later, when the said MODVAT was held to be inadmissible in the proceedings initiated by the Central Excise Commissionerate, New Delhi, the Applicants herein filed rebate claim of the duty paid by them on the impugned goods which were not exported by them but by their Faridabad unit.

The Government observes that Applicant unit was in no way associated with the export of the impugned goods. It manufactured the impugned goods and cleared the same to their sister unit for after payment of duty. The title of the impugned goods was relinquished by the Applicant unit once they were cleared out of its factory to their sister unit. As per the rules and regulations prevailing at that time, only those duty paid goods which were cleared for export directly from the factory or warehouse were entitled to rebate. Goods cleared domestically were not entitled to rebate. As such, the Government finds that the Applicants are not entitled to claim rebate under Rule 12 of the Central Excise Rules, 1944

8. The Applicant had also submitted before this Revisionary Authority during the personal hearing that the jurisdictional Commissionerate permitted them to export the goods vide letter dated 20.06.1996, issued by Additional Commissioner, Central Excise Commissionerate, New Delhi; that this letter permitted the sister unit at Faridabad unit to bring the excisable goods (Cereal Malt Extract) manufactured and exported by Nabha unit to the Ballabgarh unit for quality testing and repacking wherever necessary before actual export. The Government observes that this permission is not applicable to the impugned goods under question, as the impugned goods were exported by the Faridabad unit during the year 1995 and the permission was granted in the year 1996 (i.e 20.06.1996) by the jurisdictional Commissionerate against the applicant's request letter dated 20.05.1996 and 12.06.1996. Therefore, the permission relied upon in the matter was sought and granted by the Jurisdictional Commissionerate in the year 1996, whereas the relevant Export documents submitted by the applicant pertain to the year 1995.

9. In light of the above, the Government does not find any merit in the revision application and the same is accordingly rejected.


4/12/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

M/s Glaxo Smithkline Consumer Healthcare Ltd.,
Patiala Road, Nabha
PIN- 147201(Punjab)

G.O.I. Order No. 32/24-CX dated 04-12-2024

Copy to:

1. The Principal Commissioner of CGST, Ludhiana, GST Bhawan, F-Block, Rishi Nagar, Ludhiana-141001 (Punjab).
2. The Commissioner of CGST (Appeals), GST Bhawan, F-Block, Rishi Nagar, Ludhiana-141001 (Punjab).
3. The Deputy Commissioner, CGST Sub-Commissionerate Mohali, Central Revenue Building, Plot No. 19, sector 17-C, Chandigarh-160017.
4. M/s Lakshmikumaran & Sridharan Attorneys, 5, Link Road, Jungpura Extension, New Delhi-110014.
5. PPS to AS (RA).
6. Notice Board.
7. Guard File.
8. Spare Copy

ATTESTED



रितेश कुमार / RITESH KUMAR
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-110058

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