

REGISTERED
SPEED POST



F.No. 198/28/2016-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. 10/12/18

Order No. 647/18- CX d of the Government of India
passed by Shri R.P.Sharma, Pri er & Additional Secretary to
the Government of India, under the Centrale Excise Act, 1944.

Subject : Revision App section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. GZB-
EXCUS-000-APP-0375-15-16 dated 22.03.2016 passed by
Commissioner (Appeals), Customs and Central Excise,
Meerut-II.

Applicant : The Commissioner of Central Goods & Service Tax

Respondent : M/s Parson Nutritionals Pvt. Ltd.

ORDER

A Revision Application No. 198/28/2016-RA dated 29.06.2016 has been filed by the Commissioner, Central Excise and Service Tax, Ghaziabad, (hereinafter referred to as the applicant) against the Order-in-Appeal No. GZB-EXCUS-000-APP-0375-15-16 dated 22.03.2016, passed by the Commissioner of Central Excise(Appeals), Meerut-II.

2. The brief facts of the case are that M/s Parson Nutritionals Pvt. Ltd. Ghaziabad, (hereinafter referred to as the respondent) had exported biscuits through merchant exporter M/s Glaxo Smithkline Consumer Healthcare Ltd. and filed a rebate claim of Rs. 3,16,656/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004(NT) dated 06.09.2004 which was rejected by the original adjudicating authority on the grounds that i) the assessee did not declare MRP, ii) the levy of Excise duty could not be determined in the absence of MRP, iii) biscuits of MRP not exceeding Rs. 100 per kg were exempt from payment of Excise duty and iv) the manufacturer failed to discharge the burden of establishing that it did not pass on the excise duty to the merchant exporter. The respondent filed an appeal with Commissioner (Appeals) which was allowed vide above mentioned Order-in-Appeal. Thereafter, the departmental Revision Application is filed mainly on the ground that the respondent was not required to pay Central Excise duty on biscuits under the notification 12/12 Central Excise dated 17.03.2012 for the reason of its value being below Rs. 100/- and, therefore, the Commissioner (Appeals) has erred by allowing rebate of duty to the respondent in this case.

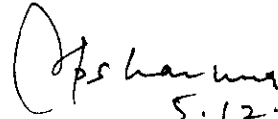
3. Personal hearing was held on 9.10.2018 and the same was availed by Sh. Raghuvir Sharan, Assistant Commissioner, for the applicant and Sh. N.K. Sharma, advocate, for the respondent. While Sh. Sharan reiterated the above

stated grounds of revision, Sh. R.K. Sharma emphasised that the Order-in-Appeal is just and proper for the reasons discussed therein.

4. The Govt. has examined the matter and it is observed that there is no dispute regarding export of duty paid goods and compliance of all the conditions specified in notification 19/2004 Central Excise dated 06.09.2004. The Revision Application is filed mainly on the ground that the exported biscuits were exempted under notification no.12/2012-CE dated 17.03.2012 for its value being below Rs. 100/- per kg and accordingly the respondent was not required to pay any Central Excise duty on the exported goods. However, it is noticed that no evidence has been adduced by the applicant to prove that the value of the exported biscuits was below Rs. 100/- and it is merely stated that the respondent had not declared the MRP of the biscuit because of which the value of the biscuits was not ascertainable. Thus, no concrete evidence is provided to support their claim that the value of the biscuit was below Rs. 100/- and the applicant's case is entirely based on assumption and presumption. On the other hand the respondent has claimed that MRP was not required to be declared in respect of exported goods under section 55 of the Legal Metrology Act, 2009, the value of exported biscuits was more than Rs. 100/- per kg and accordingly they correctly paid Central Excise duty on the exported goods for which the Commissioner (Appeals) has rightly allowed their rebate claim. Since no evidence to substantiate the allegation that the value of exported biscuits was below Rs. 100/- has been provided by the applicant, the Government is unable to agree with the applicant's claim that the respondent wrongly paid duty on the exported goods and, therefore, not eligible for rebate of duty. Moreover, assuming that no duty was payable on the export of biscuits, the refund of duty will be admissible against the duty of excise wrongly paid. Thus, there is no revenue loss in this case if rebate of duty is paid by accepting the duty was properly paid on biscuits. As regards

the other ground in the Revision Application that grant of rebate of duty in the present case is also hit by the principle of unjust enrichment, the Commissioner (Appeals) has clearly held in his order that as per certificate of the merchant exporter the respondent did not pass on duty burden to the merchant exporter and to rebut the same no contrary material has been provided in the Revision Application to establish that the duty burden was shifted on the merchant exporter in this case. Considering all the facts, the Govt. does not find any fault in the order of the Commissioner (Appeals).

5. Accordingly, the Revision Application is rejected.


5.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Goods
& Service Tax, C.G.O. Complex-II,
Kamla Nehru Nagar, Ghaziabad- 201 002

Order No. 647/18-CX dated 5-12-2018

Copy to:

1. M/s Parson Nutritionals Pvt. Ltd. Plot No. 05, Site-IV Industrial Area, Sahibabad, Distt. Ghaziabad.
2. The Commissioner (Appeals) Customs & Central Excise, Meerut-II.
3. The Assistant Commissioner of Central Excise Division-III, Ghaziabad.
4. M/s Parsons Nutritionals Pvt. Ltd., C-48, Kailash Apartments, Kailash Colony, New Delhi-48.
5. Mr. N.K. Sharma, 131, NH-V, Railway Road, Faridabad.
6. PA to AS(RA)
7. Guard File.
8. Spare Copy

ATTESTED
(Debjit Banerjee)
STO (REVISION APPLICATION)