Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10942 of 2018 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-660-2017-18 dated 28/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Sanofi India Limited **........Appellant**
3501, To 3515,6301 To 6313 & 16 Mater Road,
GIDC Estate, P.O. Box No. 136, Ankleshwar,
Baruch, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

With

Excise Appeal No. 10418 of 2019 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-475-2018-19 dated 30/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Sanofi India Limited **........Appellant**
3501, To 3515,6301 To 6313 & 16 Mater Road,
GIDC Estate, P.O. Box No. 136, Ankleshwar,
Baruch, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Ishan Bhatt, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12381-12382/2024

DATE OF HEARING: 03.07.2024
DATE OF DECISION: 16.10.2024

RAMESH NAIR

The issues involved in the present two appeals are as follows:-

(1) Appeal No. E/10942/2018- whether the excise duty paid over and above 6% on the product All Star Pen cleared as free of cost physician sample is refundable to the appellants.

(2) Appeal No. E/10148/2019- whether the excise duty paid at the rate of 6% on the product All Star Pen cleared as free of cost physician sample is refundable to the appellants.

2. Shri Ishan Bhatt Learned Counsel appearing on behalf of the appellant as regard appeal No. E/10942/2018 submits that both the lower authorities have rejected the refund claim on the ground of unjust enrichment. It is his submission that the appellant have submitted the ledger as well as Chartered Accountant certificate whereby it is established that the excise duty paid on the removal of free of cost physician sample has not been passed on to any other person as the same has been accounted for as receivable in the appellant's books of account. He also submits that since the appellant have not sold the physician sample as the same was cleared free of cost neither the value of the goods nor the duty was recovered by the appellant, for this reason also the incidence of duty has not been passed on. Accordingly, the refund was wrongly rejected on the ground of unjust enrichment. In support of his submission he placed reliance on the following judgments:-

- Savita Oil Technologies Ltd V. CCE, Belapur- 2017 (358) ELT 331 (Tri.-Mum.)
- Rama Cylinders pvt. Ltd. V. Commissioner of Customs, Kandla- 2016 (344) ELT 534 (Tri.-Ahm.)
- Bilcare Ltd. – 2014 (308) ELT 166 (Tri.-Mum.)
- Commissioner of Customs, Tuticorin Vs. Mathivathani Traders- 2016 (344) ELT 329 (Tri.- Che.)
- Sanofi India Ltd Vs CCE 2024 (3) TMI 798-CESTAT
- Indian Oil Corporation Ltd. v. Commissioner of C. Ex. & S.T., Vadodara-l 2019 (370) ELT 487 (Tri- Ahmedabad)
- Akasaka Electronics Ltd. V. Commissioner of Customs, Mumbai 2016 (343) ELT 362 (Tri-Mumbai)
- CCE, Madras v. Addison & Co. Ltd.-2018 (339) ELT 177 (SC)
- Gujarat State Fertilizer & Chemicals Ltd. v. CCE, Vadorara- 2014 (309) ELT 94(Tri-Ahmedabad)
- Mirc Electronics Limited v. CCE, Ahmedabad-2013 (287) ELT 225 (Tri-Ahmedabad)
- RCC (Sales) Pvt. Ltd. v. CCE, Hyderabad- 2008 (223) ELT 53 (Tri-Bangalore)

- Ashish Metal Rolling Mills v. CCE, Ahmedabad 2014 (305) ELT 510 (Guj.)
- Koradia Exports India Pvt. Ltd. v. CC (Exports), Mumbai 2018 (362) ELT 336 (Tri. Mum.)
- Visaka Industries Ltd. v. CCE, Guntur 2014 (301) ELT 564 (Tri. Bang.)
- Hero Motocorp Ltd. v. Commissioner of Customs 2014 (302) ELT 501 (Del.) -

3. As regard the Appeal No. E/10418/2019, he concede that since the appellant have paid 6% duty on removal of physician sample and the issue as regard rate of duty has been settled as per the Tribunal decision in the appellant's own case reported at Snofi India Vs. CCE 223 (3) TMI 798 CESTAT as well as order of the revisionary authority bearing order No. 40/41-2023-CX(WZ) /ASRA/ Mumbai dated 07.02.2023 the refund of 6% does not arise consequently this appeal can be disposed of accordingly.

4. Shri Rajesh R Kurup Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

5. On careful consideration of the submission made by both the sides and perusal of record, we find that in appeal No. E/10942/2018 the only reason for rejection of refund claim is that the same is hit by unjust enrichment. We find that firstly, the appellant have not sold the physician sample, as the same was cleared free of cost so not only the duty even the principle amount towards the cost of physician sample has not been passed on to any other persons Moreover, the appellant have shown the amount of duty as receivable in their books of account and also submitted CA certificate to this effect. Therefore, taking a stock of all these undisputed fact, it can be conveniently concluded that the appellant have not passed on the incidence of duty paid in access for which the refund is sought for by the appellant. Accordingly, we are of the clear view that the refund of Rs.58,59,456/- is not hit by the mischief of unjust enrichment.

6. As regard Appeal No. E/10418/2019, initially the appellant have filed a refund claim of duty paid at the rate of 6% on the ground that the physician sample is eligible for exemption from whole of the duty. However, as of now the issue of rate of duty i.e. 6% in terms of Notification No. 12/2012-CE dated 17.03.2012 has been finally decided by this Tribunal in the appellant's own case reported as Sanofi Vs. CCE 224 (3) TMI 798-CESTAT and also by the revisionary authority order No.40-41/2023-CX(WZ)/ASRA/MUMBAI dated 07.02.2023. Therefore, now as regard the issue of rate of duty is settled at 6% and attained finality. Therefore, the appellant is not eligible for refund as they have correctly paid the duty @ 6%.

7. In view of the above, as a result, the appeal No. E/10942/2018 is allowed and appeal No. E/10418/2019 is dismissed.

(Pronounced in the open court on 16.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha