

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH AT CHANDIGARH
DIVISION BENCH

Appeal No. E/61007/2018-Ex

(Arising out of Order-in- Original No.JNK/CEX/000/10/2017-18 dated 21.3.2018dt. 11.6.2021 passed by the Commissioner, Central Excise& CGST Commissionerate, Jammu & Kashmir)

U P L Limited

Appellant

(Phase-1, SIDCO Industrial Area Samba, Near Railway Station, Jammu, Jammu and Kashmir, 184121)

Vs.

CCE &ST,Jammu& Kashmir

Respondent

(GST Commissionerate, Jammu & Kashmir)

Present for the Appellant: ShriPrakash Shah &Sh.Mohit
Ravel,Advocates

Present for the Respondent: ShriBhasha Ram,AR

CORAM:HON'BLE MR. ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER
(TECHNICAL)

Date of Hearing/Decision:12.01.2022

FINAL ORDER No.60047/2022

Per :Ashok Jindal

The appellant is in appeal against the impugned order denying self-credit availed by the appellant during the period April, 2015 to March, 2016. Consequently, confirmed the demand of Rs.29,64,10,123/- alongwith interest and imposed penalty equivalent to duty.

2. The facts of the case are that the appellant is engaged in the manufacture and clearance of various insecticides of Chapter heading 3808 of the first Schedule to the Central Excise Tariff Act, 1985 located in the State of Jammu & Kashmir and after availing the facility of area based exemption under Notification No.01/2010-CE dated 6.2.2010 issued under section 5A of the Central Excise Act, 1944 which exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985; other than the goods specified in Annexure; and cleared from a unit located in the State of Jammu & Kashmir, from so much duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the unit.

3. Para 5 of the said notification relates to the issue in hand. As per para 5 (c) of the Notification, a manufacture who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year. Therefore, in view of the above provisions to avail facility of self-credit of the amount, it is mandatory for an assessee to exercise his option in writing before effecting the first clearance in any financial year, but during the period 2015-16, the appellant has exercised the said option on 6.4.2015 whereas the first clearance made on 1.4.2015, therefore, contravened the provisions of para 5 (c) of the said notification. In view of this, a show cause notice was issued to the appellant to deny self-credit availed to the appellant. The said order was challenged before the Id. Commissioner (Appeal) who held that

merely not filing undertaking before first clearance will not disentitle to benefit of the said notification, by taking self-credit of duty paid by the appellant, otherwise also, the appellant is entitled to cash refund of duty paid during said period. During the pendency of the appeal against the order of denial of self-credit, the impugned ShowCause Notice was issued to recover the self-credit availed by the appellant under section 11A of Central Excise Act, 1944 and the impugned order has been passed for recovery of amount under section 11A of the Act. Against the said order, the appellant is before us.

4. Heard the parties.

5. The sole issue relates to contravention of condition para 5(c) of the Notification No.01/2010-CE dated 6.2.2010 on the grounds, the appellant has filed declaration on 6.4.2015 whereas the first clearance was made on 1.4.2015. The relevant part of the Notification is as under: -

"5. Notwithstanding anything contained in paragraph 4,-

(a) the manufacturer at his own option, may take credit of the amount calculated in the manner specified in paragraph 2 in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2002, in subsequent months, and such payment shall be deemed to be payment in cash;

(b) the credit of the refund amount may be taken by the manufacturer in his account current, by the 7th day of the month following the month under consideration;

(c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;

(d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 15th day of the month in which the credit has been so taken;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the intimation, reverse the said excess credit from the account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount;

(f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in paragraph 2 in his account current on his own, as provided for in clauses (a) to (c)."

6. As per condition 5 (c) of the said notification, it is admitted that the appellant had to exercise option before the first clearance in the financial year and the appellant has failed to do so. The said issue has been settled by the Commissioner (Appeals), who held that filing declaration dated 6.4.2015 is not fatal to deny the benefit of the said notification, the said order has attained finality. The impugned show cause notice has been issued consequent to denial of exemption by the adjudicating authority while the matter was pending before the Commissioner (Appeals). As the issue already been settled by the Commissioner (Appeals) holding that the appellant is entitled to avail the benefit of the said notification with effect from 6.4.2015.

7. In the circumstances, we hold that the impugned order is not sustainable (as on basis of which the impugned Show Cause Notice has been issued) has already been set aside and the same attained finality.

8. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Order pronounced in the open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

mk