

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal Nos.40513 to 40526 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 362 – 375/221 dated 12.5.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Aurobindo Pharma Ltd.

The Water Mark Building
Plot No. 11, Survey No. 9, Hi Tech City
Kondapur, Hyderabad – 500 084.

Appellant

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House
60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri N. Ram Reddy, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **40158-40171 / 2022**

Date of Hearing : 05.05.2022

Date of Decision: 06.05.2022

These appeals are filed against order passed by Commissioner (Appeals) who upheld the rejection of refund claim filed by the appellant.

2. Brief facts are that the appellant had imported certain goods under Advance Authorization Scheme vide various licenses. As the Advance Authorization expired, the appellants were unable to fulfill their export obligation as stipulated in these licenses. They have paid appropriate duty and interest on the quantity of inputs which were not used in the manufacture of finished products for exports. The duty was paid manually vide TR6 challan. As the

differential duty comprised a portion of IGST also, the appellant had filed refund claim for the reason that there is no provision to avail credit of IGST which is paid through TR6 challan. The adjudicating authority rejected the refund claim on the ground that there is no excess payment and that the duty liability arose on account of non-fulfillment of the conditions of the license. Against this, the appellants filed appeals before Commissioner (Appeals), who upheld the order of rejection. Hence these appeals.

3. On behalf of the appellant, Id. Counsel Shri N. Ram Reddy appeared and argued the matter. He reiterated the grounds of appeal.

4. The learned AR Shri S. Balakumar appeared for the department. He explained that the appellants have not paid any excess duty. They could not fulfill the export obligations as per the Advance Authorization license for which they have remitted the duty liability along with interest. Hence they cannot claim refund of the duty paid on inputs which were not used for manufacture of finished products for export. The issue is covered by the decision of the Tribunal in the case of Servo Packaging Ltd. Vs. Commissioner of GST & Central Excise, Puducherry – 2020 (373) ELT 550 (Tri. Chennai). He prayed that the appeals may be dismissed.

5. Heard both sides.

6. According to the appellant, they have paid duty as per TR6 challan and could not avail the credit of IGST paid as part of the duty liability. In the present case, it has to be noted that the duty was paid as the appellants were not able to fulfill the export obligation as per the Advance Authorization license. It then becomes clear that the inputs have not been used in the manufacture of final products for export.

7. The Tribunal in the case of Servo Packaging Ltd. (supra) had occasion to consider a similar issue and held that the refund is not eligible. The Commissioner (Appeals) has followed the said decision in para 7 of the impugned order. For better appreciation, paras 10 to 12 of the decision is reproduced as under:-

“10. Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import compared to the one under Advance Authorization may vary because of the nature of import.

11. The import which would have normally suffered duty having escaped due to the Advance Licence, but such import being a conditional one which ultimately stood unsatisfied, naturally loses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 (supra), paragraph 2.35 of the FTP which requires execution of bond, etc., in case of non-fulfilment of export obligation and paragraph 4.50 of the HBP read together would mean that the Legislature has visualized the case of non-fulfilment of export obligation, which drives an assessee to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of *bona fide* default in export obligation, which also takes care of voluntary payment of duty with interest as well. Admittedly, the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place. At best, the appellant could have availed the Cenvat credit, but that would not *ipso facto* give them any right to claim refund of such credit in cash with the onset of GST because

CENVAT is an option available to an assessee to be exercised and the same cannot be enforced by the CESTAT at this stage.

12. There is no question of refund and therefore, I do not see any impediment in the impugned order.”

8. From the discussions made above, I do not find any reasons to take a different view from the decision of the Tribunal in the case of Servo Packaging Ltd. (supra). The impugned order does not call for any interference. The appeals are dismissed.

(Pronounced in open court on 06.05.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex