



CHAPTER IV EXEMPTIONS

Under section 5A(1) of the Central Excise Act, 1944, the Government is empowered to exempt goods, fully or partially, from the levy of excise duty subject to the conditions specified in the notification granting the exemption.

During the course of our audit we have observed instances of violation of notifications relating to SSI exemption and availing of credit facility while paying duty under area based exemptions.

4.1 Exemption to Small Scale Industries

Notification No. 8/2003 CE dated 1 March 2003, as amended, stipulates that manufacturers whose aggregate value of clearances for domestic consumption in the preceding financial year did not exceed Rs. four crore were eligible for exemption from duty upto an aggregate value not exceeding Rs. one crore (Rs. 1.5 crore with effect from 1 April 2007). To determine the aggregate value of clearances for applying the maximum limit of Rs. four crore, the clearances at 'Nil' rate of duty are also to be included as per notification No. 6/2003 of March 2003, as amended in March 2006. One of the conditions for availing the above exemption was that the manufacturer was not to take cenvat credit of duty paid on inputs.

4.1.1 M/s B.M. Pharma Ltd., in Chandigarh commissionerate, engaged in manufacturing of pharmaceutical products availed the SSI exemption during 2007-08. Test check of records, revealed that assessee had made clearances of Rs. 6.86 crore during the year 2006-07. It had excluded clearances of Rs. 2.98 crore made at nil rate of duty to arrive at a net turnover below Rs. four crore. This was not permitted as per notification No. 6/2003. Therefore, the assessee was not entitled for SSI exemption in the next year i.e. 2007-08 and central excise duty of Rs. 23.98 lakh was leviable on the clearances of Rs. 1.49 crore made during 2007-08.

On this being pointed out (November 2008), the department stated (August 2009) that two SCNs for Rs. 23.98 lakh (Rs. 3.16

lakh and Rs. 20.82 lakh) had been issued in April and August 2009.

4.1.2 Two assessees, M/s Burgeon Pharmaceuticals, Singaperumalkoil, in Chennai III commissionerate and M/s Pharmafabrikon, in Madurai commissionerate, were manufacturing their own products as well as products for other customers. They availed the benefit of the above notification, for clearances of their own products upto the limit prescribed. For the manufacture and clearance of products of other customers, no exemption was availed and duty was paid for clearances from 1 April 2005 onwards. However, the assessees availed cenvat credit of duty paid on inputs used in the

manufacture of products of other customers. The condition prescribed in the notification, bars the availing of cenvat credit on inputs and does not distinguish between inputs used for own products and products of other customers. Accordingly, the assessees were not eligible to avail the benefit of the notification cited above and were liable to pay duty for clearances of its own products also from 1 April 2005 onwards. The non-payment of duty by the assessees during the period from April 2005 to September 2008 worked out to Rs. 34.37 lakh.

4.2 Irregularities relating to area based exemption in Kashmir

4.2.1 Incorrect credit on account of education cess and secondary and higher education cess

Notification No. 56/2002, dated 14 November 2002 stipulates that refund of central excise duty and additional duty of excise will be given under area based exemption. Thus education cess and secondary and higher education cess are not refundable.

M/s Lupin Ltd., EPIP, Bari Brahmana, in J & K commissionerate, was registered (14 July 2007) with the central excise department for formulation of allopathic pharmaceuticals came under the LTU⁷ regime with effect from 12 May 2008. The assessee claimed (August 2007) refund of basic excise duty, cess and

Secondary and Higher Education Cess from the assistant commissioner, central excise department, Jammu. It allowed the refund of basic excise duty and rejected the other refunds as they were not covered by the area based exemption notifications.

The assessee continued to claim refunds totalling Rs. 18.88 lakh and Rs. 9.46 lakh on account of education cess and secondary and higher education cess respectively upto July 2008 with the assistant commissioner, central excise department, Jammu. Although no refund orders were issued, the assessee credited these claims totalling Rs. 28.34 lakh in its PLA under notification no.65/2003, dated 6 August 2003, in August 2008, by which time it had shifted to the jurisdiction of LTU, Mumbai. It paid duty using these credits made in the PLA. This action was irregular as the assessing officer had refused the claims and the assessee disregarded these orders and credited its claims to PLA. The PLA credit of Rs. 28.34 lakh and interest of Rs. 3.68 lakh (till March 2009) is recoverable.

On this being pointed out (March, 2009), the central excise department, J&K, forwarded the copy of the observation to the assistant commissioner central excise, office of commissioner LTU Mumbai, in whose jurisdiction assessee falls now. Response from LTU, Mumbai has not been received (March 2010).

⁷ Large tax payer unit

4.2.2 Eligibility conditions

The CCRs provide that a manufacturer can take 50 per cent of cenvat credit immediately in respect of capital goods received in the factory premises and the balance only in subsequent financial years. The manufacturer can also take credit for additional duty of customs on imported inputs/capital goods. For availing of area based exemption in J & K under notification No. 56/2002 CE dated 14 November, 2002 it is mandatory to take and utilise cenvat credit for payment of duty. After exhausting the accumulated cenvat credit, the balance of excise duty is paid in cash by the manufacturer and thereafter it is refunded to him by the department.

(i) M/s Medley Pharmaceuticals Pvt. Ltd. Jammu, in J & K commissionerate, engaged in the manufacture of allopathic medicines, acquired capital goods from Mumbai during April/May 2006. The assessee should have taken cenvat credit of Rs. 26.28 lakh and used it to pay duty. However, he did not take any credit and paid the entire central excise duty from PLA account which was subsequently refunded to him. Since the assessee had not complied with the provision, the area based exemption was not available to him in this case and exempted duty of Rs. 26.28 lakh was recoverable with interest of Rs. 8.26 lakh (till March 2009).

On this being pointed out (February 2008), the department intimated (April 2008) that a SCN had been issued to the assessee.

(ii) Similarly, M/s. Cadila Pharmaceuticals Ltd., M/s. Ind-Swift Ltd., M/s. Medley Pharmaceuticals and M/s. Parenteral Pharma, in J & K commissionerate, did not take credit for additional excise duty of Rs. 6.57 lakh on imported inputs/capital goods. Consequently, the ineligible exemption of Rs. 6.57 lakh was recoverable with interest of Rs. 1.34 lakh (till March 2009).

On the observations being pointed out (March 2009), the department admitted (April 2009) these and intimated recovery of Rs. 1.66 lakh in the case of M/s. Ind-Swift Ltd.

4.2.3 Clearance of goods at incorrect assessable value

Section 4A of Central Excise Act, 1944 provides that where goods are cleared with a printed MRP, excise duty will be charged on the MRP less abatement, if any, allowed by the Central Government.

M/s Cadila Pharmaceuticals Pvt. Ltd., Samba, in J & K commissionerate, engaged in the manufacture of tablets, capsules and syrups, was availing of exemption of duty under area based exemption. They had cleared some finished products under section 4A of Central Excise Act, 1944 at lesser assessable value, resulting in short payment of central excise duty of Rs. 13.21 lakh (including education cess of Rs. 0.26 lakh). The assessee is also liable to pay interest of Rs. 2.58 lakh (till March 2009) under section 11AB of Central Excise Act, 1944. The department intimated (April 2009) that necessary action had been initiated and the party had been asked to deposit the pending dues alongwith interest immediately.