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WPA 3173 of 2020

Fresenius Kabi Oncology Limited
Vs
Union of India & Ors.

Mr. Sourav Bagaria,
Mr. Avra Mazumder,
Mr. Arindam Chandra,
Mr. Atish Ghosh
… For the Petitioner.
Mr. Bhaskar Prosad Banerjee,
Mr. Abhradip Maiti,
Ms. Pooja Basak,
Ms. Shatabdi Sen
… For the Respondents.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order of the Revisional Authority dated 18th November, 2019, by contending that the Revisional Authority concerned has denied the benefit of export rebate under Rule 18 of the Central Excise Rules by relying on a Notification being No.4/2006-CE dated 1st March, 2006 read with Notification No.21/2002-Customs dated 1st March, 2002. Petitioner submits that in passing the impugned order and denying the aforesaid rebate benefit to the petitioner, Revisional Authority concerned has ignored and disregarded the subsequent amended Notification being No.11-2006-Customs dated 1st March, 2006 under which petitioner claims that its product is a "bulk drug" and fall in category "B" under serial No.47 of the aforesaid Notification according to which petitioner contends that the export of the products in question is "Dutiable" and is not "Nil taxable". Petitioner further contends that at no point of time the authority has ever took the stand that the product of the petitioner is not a "bulk drug". Petitioner further contends that the arguments made by the petitioner in its written argument filed by the Revisional Authority was not taken into consideration at the time of passing the impugned order.

Mr. Banerjee, learned Advocate appearing for the respondents defends the impugned order and finding of the Revisional Authority and contends that the duty paid by the petitioner was at its own will and is making attempts to encash the CENVAT credit available with the petitioner by way of rebate.

Considering the facts and circumstances of the case as appears from record and submission of the parties and the discussion made above, I am inclined to set aside the impugned order dated 18th November, 2019 and to remand the matter back to the Revisional Authority concerned to re-consider and pass the order afresh by dealing with the written arguments filed before it by the petitioner as well as by taking into consideration the aforesaid Notification No.11-2006-Customs dated 1st March, 2006 issued by the Under Secretary to the Government of India, Ministry of

Finance, by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioner or its authorised representative, within a period of 12 weeks from the date of communication of this order.

(Md. Nizamuddin, J.)