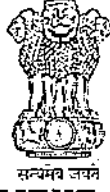


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No.195/72/WZ/2018-RA / 6294

Date of Issue: 14.11.2022

ORDER NO. 1059 /2022-CX (WZ) /ASRA/Mumbai DATED 10.11.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s SBS Polychem P. Limited,
Haldar Paguthan Road, Village -Haldar,
P.O., Paguthan, District Bharuch - 392210.

Respondent : Pr. Commissioner of CGST & Central Excise,
Vadodara - II Commissionerate.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal no. VAD-EXCUS-002-APP-605-2017-18 dated 20.11.2017 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara.

ORDER

The subject Revision Application has been filed by M/s SBS Polychem Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 20.11.2017 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara which decided an appeal filed by the applicant against Order-in-Original dated 31.08.2017 passed by the original rebate sanctioning authority, which in turn decided the rebate claims filed by the applicant.

2. Brief facts of the case are that the respondent filed six rebate claims for the Central Excise duty paid, amounting to Rs.8,06,597/-, on the goods exported in terms of Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004. The original authority found that the FOB value of the goods was lesser than the invoice value and held that excess duty was paid by the respondent and that the rebate would be limited to the duty paid on the FOB value. Having found so, the original authority sanctioned rebate of Rs.7,61,160/- in cash and the excess amount of Rs.45,437/- paid by the applicant was allowed to be taken as re-credit in their Cenvat credit account in terms of Section 2(48) of the CGST Act, 2017.

3. Aggrieved, the applicant filed an appeal against the said Order before the Commissioner (Appeals) on the grounds that the original authority had erred in allowing the re-credit of the excess payment and should have disbursed the same to them in cash in terms of Section 142 of CGST Act, 2017. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 20.11.2017 found that as per Section 142(4) of the CGST Act, 2017, the refund/rebate payment in cash should be restricted to the amount of duty

worked out on the basis of the FOB value mentioned in the relevant Shipping Bills and upheld the Order of the original authority.

4. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The Order of the original authority sanctioning their rebate claim by allowing partial re-credit in the Cenvat Credit register was against the transitional provisions contained in the CGST Act, 2017;

(b) That Section 142(4) read with Section 142(3) of the CGST Act, 2017 prescribed that the refund of duty paid on the goods exported has to be disposed of as per the existing law and any amount eventually accruing to the claimant should be paid in cash; that any other mode of payment other than cash would not be of any use to the claimant and therefore special provision was incorporated in the CGST Act, 2017 stipulating that any amount accruing to the claimant has to be paid in cash;

(c) That the original authority was well aware of the fact that any amount accruing to the claimant had to be refunded in cash; that the order of the original authority allowing re-credit has no *locus standi* as there is no provision by which they could claim or carry forward the amount of Cenvat allowed as re-credit under the CGST law or be able to utilize the same;

(d) That the transitional provisions contained in the CGST Act, 2017 has been incorporated with a non-obstante clause and thus the said clause would prevail over other Acts and hence the excess amount paid by them should also be refunded to them in cash.

5. Personal hearing in the matter was held on 12.10.2022 and Shri Sreekumar, Consultant appeared online on behalf of the applicant. He

submitted that in view of Section 142(3) of the CGST Act, 2017, the amount returned to them in their Cenvat account should be allowed in cash.

6. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

7. Government notes that the short issue involved in the instant case is whether the amount of Central Excise duty paid in excess of the FOB value of the goods which were exported, is required to be refunded to the respondent in cash. Government notes that the applicant in their submissions before the Commissioner (Appeals) has not disputed the assessable values, arrived at by the original sanctioning authority, which were lower than the values at which Central Excise duty was paid by them. As such, Government notes that assessable values re-determined by the original authority are not in dispute.

8. Government notes that the issue to be decided is whether the amount paid in excess to the duty actually found payable should be refunded in cash as per the CGST Act, 2017. Government finds that this was the only issue that was agitated before the Commissioner (Appeals) by the applicant and the impugned Order-in-Appeal is also limited to the deciding the same.

9. Government notes that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944. Government has examined the CGST Act, 2017 and finds that the same does not provide for application of Section 35EE of the Central Excise Act, 1944 in relation to matters under the CGST Act, 2017. The issue in the present case has to be decided as per the provisions of the CGST Act, 2017. Thus,

Government finds that it does not have the jurisdiction to decide the issue covered by the subject Revision Application.

10. In view of the above, Government holds that the subject Revision Application is non-maintainable due to lack of jurisdiction. The applicant can seek relief under the provisions of the CGST Act, 2017, with the appropriate authority.

11. The Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1059/2022-CX (WZ) /ASRA/Mumbai dated 10.11.2022

To,

M/s SBS Polychem P. Limited,
Haladar Paguthan Road Village,
Haladar, P.O., Paguthan, District Bharuch – 392210.

Copy to:

1. Pr. Commissioner of CGST & Central Excise, Vadodara – II
Commissionerate, GST Bhavan, Subhanpura, Vadodara – 390 023.
2. Commissioner (Appeals), GST & Central Excise, Vadodara, GST Bhavan,
1st floor, Annexe, Race Course Circle, Vadodara – 390 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.