

SPEED POST



F.No. 195/13-38/2019-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...11/6/21...

Order No. 120-145/2021-CX dated 10-6-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. NOI-EXCUS-001-APP-174 to 199-18-19 dated 30.07.2018 passed by the Commissioner (Appeals), Customs & CGST, Noida.

Applicants : M/s. Uniword Telecom Limited, Noida.

Respondent : The Commissioner of CGST, Noida.

ORDER

The revision applications, bearing nos. 195/13-38/2019-RA dated 01.05.2019, have been filed by M/s Uniword Telecom Limited, Noida (hereinafter referred to as the Applicant) against Orders-in-Appeal Nos. NOI-EXCUS-001-APP-174 to 199-18-19 dated 30.07.2018, passed by the Commissioner (Appeals), Customs & CGST, Noida.

2. Brief facts of the case are that the Applicant were registered under Central Excise for manufacture of various excisable goods viz. Telephone, Amplifiers, Spider Cell, Public Address System, Electrical and Digital Energy Meters etc. falling under Chapter 85 of the Central Excise Act, 1985. The Applicant cleared excisable goods for export after payment of duty from CENVAT credit accounts. The rebate claims were sanctioned by the original authority, under Rule 18 of the Central Excise Rules, 2002. However, a case of fraudulent availment of CENVAT credit by the Applicant was taken up for investigation, which revealed that the Applicant was engaged in evasion of Central Excise Duty by way of availing wrong and inadmissible CENVAT credit on the strength of invoices issued by the non-existent fictitious firms during the period from November, 2002 to December, 2005. Since CENVAT credit availed was found to be non-admissible, the original authority issued demands for recovery of rebate claims earlier sanctioned on account of the duty paid through such inadmissible CENVAT credit. These demands were confirmed by the original authority, i.e., the Deputy Commissioner, CGST, Div-III, NOIDA. Matter was then taken in appeal before the Commissioner (Appeals) who rejected the appeals, vide the impugned Order-in-Appeal. The details of rebate claims sanctioned and orders passed by the original authority confirming the demands and recovery of the same are, as under:

S. No.	Order-In-Original No.	Amount of Rebate claim sanctioned (Rs.)
1.	72/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	1,99,449/-
2.	65/R/DC/CGST/Div-III/2017-18 dated 27.02.2018	3,19,062/-
3.	63/R/DC/CGST/Div-III/2017-18 dated 27.02.2018	4,63,390/-
4.	68/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	4,23,781/-
5.	70/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	2,54,351/-
6.	64/R/DC/CGST/Div-III/2017-18 dated 27.02.2018	4,65,748/-
7.	69/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	4,34,445/-
8.	71/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	3,74,976/-

9.	67/DC/REF/CGST/Div-III/2017-18 dated 27.02.2018	3,77,493/-
10.	66/R/DC/CGST/Div-III/2017-18 dated 27.02.2018	2,41,990/-,
11.	73/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,38,737/-
12.	74/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
13.	75/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
14.	76/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
15.	77/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,97,025/-
16.	78/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,42,066/-
17.	79/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
18.	80/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
19.	81/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,91,353/-
20.	82/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,48,320/-
21.	83/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,08,253/-
22.	84/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,53,819/-
23.	85/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	3,73,636/-,
24.	86/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,52,159/-
25.	87/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	4,78,839/-
26.	88/DC/REF/CGST/Div-III/2017-18 dated 28.02.2018	19,860/-

3.1. The revision applications have been filed on the grounds that the wrongly taken and utilised CENVAT credit was quantified and decided by the Settlement Commission, vide its Final Order no. 83/Final Order/CEX/GMD/2008 dated 29.02.2008, as Rs. 4,94,57,794/-; that the Settlement Commission also ordered that the amount so quantified be paid along with interest and penalty as specified in the said Order; that the Applicant had deposited the entire amount with interest and penalty as ordered by the Settlement Commission; that when they had paid back wrongly taken and utilised CENVAT credit along with interest and penalty as settled by the Settlement Commission, no wrongly taken and utilised CENVAT credit remains with them; that consequently, any duty paid through CENVAT credit on the final products cleared either for home consumption or for export cannot be questioned or demanded on the ground that the CENVAT credit had been wrongly taken and utilised; that the department had never initiated any demand of duty on the domestic clearances for the relevant period even though such clearances were also made by utilising the same CENVAT credit; that as per Rule 14 of the CENVAT Credit Rules, 2004 such CENVAT credit which was wrongly taken and utilised is recoverable along with interest and penalty may be imposed under Rule 15; that, in the present case, same has already been done by the Settlement

Commission and duly complied by the Applicant; that, therefore, raising the demand on account of same issue which has already been settled by the Settlement Commission is contrary to the mandate of Section 32M of the Central Excise Act, 1944.

3.2. A Condonation of Delay (COD) application has also been filed on the grounds that the Applicant had initially filed the appeal before the CESTAT Allahabad as *"The Applicant received the impugned Order-in-Appeal with a forwarding page over it wherein it was mentioned at SI. No. 2 that 'Appeal against this order shall lie in the CESTAT Allahabad' and therefore Applicant was misled by the aforesaid instruction appended to the Order-in-Appeal and thus filed an appeal in CESTAT Allahabad against the above mentioned Order-in-Appeal by further 10% of the demand as pre-deposit."* However, CESTAT Allahabad, vide Final Order No. 70558-70583/2019 dated 12.03.2019 found that the appeal is not maintainable before CESTAT as the order passed by the Commissioner (Appeals) related to rebate of duty. Therefore, citing several judgments of the Tribunal and Government, it has been contended that the period elapsed in pursuing the appeal before the CESTAT, Allahabad may be excluded from the limitation period and delay in filing the instant revision application may be, accordingly, condoned.

4. Personal hearing, in virtual mode, was held on 10.06.2021. Sh. Ram Awatar Singh, Advocate appeared for the Applicant and reiterated the contents of RA as well as application for condonation of delay. It was pointed out to Sh. Singh that in matters relating to earlier period, they had approached the Government in revision, which were rejected, whereas in these matters for subsequent period, they chose to approach CESTAT. Sh. Singh stated that in the earlier cases the rebate was rejected because CENVAT credit used to pay duty was said to have been availed wrongly whereas in the present cases rebate sanctioned is sought to be recovered as the CENVAT credit used to pay duty was availed wrongly. He submitted that in these circumstances and guided by sl. 2 to the Preamble of impugned OIA, they filed the appeals before the CESTAT as a bonafide act. Sh. Singh also relied upon the case laws cited in this regard in the COD application. Sh. R.P. Pushkar, Superintendent appeared for the respondent department and supported the orders of the lower authorities.

5.1. The Government has carefully examined the matter.

5.2. Instant revision applications have been filed with a delay. A COD application has been filed, as brought out in para 3.2 above. The Government observes that: -

- (i) The dispute in respect of identical issue relating to rebate for earlier period was decided by the Commissioner (Appeals), vide Order-in-Appeal no. 271/CE/APPL/Noida/2012 dated 29.08.2012 and Order-in-Appeal No. 272-273/CE/APPL/Noida/2012 dated 29.08.2012 against the Applicant. The Applicant filed revision applications before the Central Government bearing no. 195/1532/2012/R.A. dated 20.11.2012 and 195/1630-1631/2012/R.A dated 20.11.2012. These revision applications came to be rejected by the Government, vide Order No. 248/17-CX dated 13.10.2017 and Order No. 252-253/17-CX dated 13.10.2017. These revision applications were filed within the limitation period of three months as provided under Section 35EE of the Central Excise Act, 1944 without taking recourse to an appeal before the CESTAT.
- (ii) In the subject cases, on the other hand, appeals were pursued before CESTAT, Allahabad ostensibly on the ground that in the forwarding page of the impugned Order-in-Appeal, at serial 2, they were advised to file appeal before CESTAT, Allahabad. However, this contention of the Applicant is incorrect in as much as at serial 4 of the Preamble to the impugned Order-in-Appeal, it is clearly stated that in respect of matters falling under Clause (a), (b), (c) & (d) of the first proviso to Section 35B (1) of the Central Excise Act, 1944, appeal shall not be filed before CESTAT and in such matters a recourse should be taken to revision in terms of Section 35EE *ibid*.
- (iii) When the above was pointed out, during the course of personal hearing, it was submitted on behalf of the Applicant that, in earlier cases, the rebate was rejected because CENVAT credit used to pay duty was said to have been availed wrongly whereas in the present cases rebate sanctioned is

sought to be recovered as the CENVAT credit used to pay duty was availed wrongly. However, this distinction sought to be made by the Applicant, is misconceived and imaginary in as much as in the earlier cases also rebate sanctioned was found to be erroneous by the Commissioner (Appeals) on the grounds that rebate was obtained in respect of duty paid from the CENVAT credit wrongly availed. Identical issue is involved in the instant revision applications also. Further, the Order-in-Appeal impugned herein has been passed by the Commissioner (Appeals) by following the Orders of the Government in earlier matters, i.e., the Orders Nos. 248/17-CX and 252-253/17-CX, both dated 13.10.2017. This is all the more a reason that the Applicant could have had no cause to entertain any doubts on the grounds urged herein.

- (iv) It appears from the impugned Order-in-Appeal that the earlier Order No. 248/17-CX passed by the Government on 13.10.2017 has been appealed by way of a writ before the Hon'ble Allahabad High Court (Civil Misc. Writ Petition No. 126 of 2018 dated 30.01.2018). However, in the instant RAs there is absolutely no indication that the Applicant had suffered adverse order by the Government in the RAs filed for the earlier period or that such orders were challenged in writ before the Hon'ble High Court.

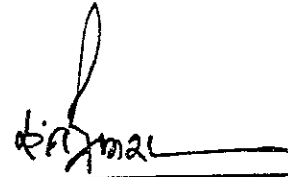
5.3. In view of the above, it is apparent that the Applicants were clearly aware that, in such matters, the orders passed by the Commissioner (Appeals) are to be challenged in revision before the Government and not in appeal before CESTAT. But the Applicant still chose to pursue their remedy in a wrong forum, perhaps, because they had suffered adverse orders in their earlier revision applications wherein, they had not been able to obtain any relief even from the Hon'ble High Court. As such, the Government is constrained to observe that this is not a case of the Applicant pursuing a remedy before a wrong forum due to a bonafide mistake/omission thereby meriting condonation of delay rather it appears to be a case of knowingly pursuing such a remedy in a wrong forum. Having thereafter failed to obtain any relief from the CESTAT, the Applicants were left with no option but to approach the Government in revision. However, even at this stage, the Applicant chose to remain conspicuously silent about

the earlier Orders and the status thereof. Thus, the Applicants have also not approached the Government with clean hands.

5.4. The case laws relied upon to support the application for COD are not applicable in the facts of this case.

5.5. In these facts and circumstances of the case, the Government holds that this is not a fit case to condone the delay in filing of the instant revision applications by excluding the time taken in pursuing an appeal before CESTAT.

6. Revision Applications are, accordingly, rejected as barred by limitation without advertng to the merits of the case.



(Sandeep Prakash)

Additional Secretary to the Government of India

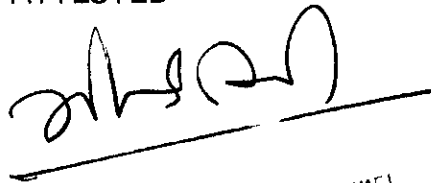
M/s Uniword Telecom Ltd.,
D-149, Sector- 63, Phase-III, Noida

G.O.I. Order No. 120 -145/21-CX dated 10-6-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Noida-I, C-56/42, Sector-62, Noida- 201 307.
2. Commissioner (Appeals), Customs & CGST, Noida.
3. Sh. Ram Awatar Singh, Advocate, SE-149, Shastri Nagar, Ghaziabad-201 206.
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi