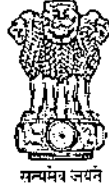


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 195/68-70/WZ/2019 | 15-29

Date of Issue: 16.03.2023

ORDER NO. ¹²³⁻25/2023-CX (WZ) /ASRA/MUMBAI DATED 15.03.2023 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 Gujarat Narmada Valley Fertilizers & Chemicals Ltd.
No. 259, 260/P, 231/P, GIDC Dahej – II Indl. Estate,
At & Post Rahiyad, Taluka Vagra,
District Bharuch – 392130.

Respondent : The Pr. Commissioner of GST & Central Excise,
Vadodara – II Commissionerate,
GST Bhavan, Subhanpura, Vadodara – 390 023.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
VAD-EXCUS-002-APP-816-818-2017-2018 dated
22.01.2018 passed by the Commissioner (Appeals), GST
& Central Excise, Vadodara.

ORDER

The subject Revision Application has been filed by M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited, Bharuch (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 22.01.2018 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara. The said Order-in-Appeal disposed of three appeals against Orders-in-Original dated 31.07.2017, 17.08.2017 and 31.07.2017 all passed by the Assistant Commissioner, GST & Central Excise, Division - VII, Bharush, Vadodara - II, which in turn decided refund/rebate claims filed by the applicant. The details of the Orders-in-Original are as under: -

Sl. No.	Order-in-Original No. & Date	Total rebate claimed (Rs.)	Rebate sanctioned in cash (Rs.)	Rebate sanctioned as re-credit (Rs.)
1	DIV-II/BRH/10&11/R/17-18 dated 31.07.2017	58,43,312/-	56,68,361/-	1,74,951/-
2	DIV-VII/BRH/15/R/17-18 dated 31.07.2017	48,64,487/-	48,26,756/-	37,731/-
3	DIV-VII/BRH/61/R/17-18 dated 17.08.2017	12,54,300/-	0	12,54,300/-

2. Brief facts of the case are that the applicant had in the cases mentioned at Sl. No. 1 & 2 of the above table had applied for rebate of the duty paid in respect of the goods exported in terms Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004. As regards the Sl. No.3, the applicant on realizing that they had inadvertently paid duty on a consignment exported under Bond had sought refund of such duty paid. The original authority, in the first two cases, found that the rebate claimed was in excess of the FOB value and accordingly sanctioned rebate to the extent of the FOB value and the excess payment was allowed as re-credit to the Cenvat Credit account of the applicant. The original authority, in the case at Sl. No.3, after verification of the claim of the applicant and finding it to be proper, sanctioned the refund and allowed the same to be taken as re-credit in their Cenvat Credit

account. In all the three cases the original authority allowed such re-credit as the duty was found to have been paid through the Cenvat account.

3. Aggrieved, the applicant preferred appeals before the Commissioner (Appeals) against all the three Orders-in-Original on the ground that in terms of Section 142 of the CGST Act, 2017 they should have been paid the entire amount paid and claimed by them in cash instead of allowing the same by way of re-credit in the Cenvat credit account. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 22.01.2018 rejected all the three appeals and held that the original authority had correctly held that the refund/rebate payable in cash should be restricted to the amount of duty worked out on the basis of FOB value.

4. The applicant thereafter preferred filed appeals before the Hon'ble Tribunal against the Order-in-Appeal dated 22.01.2018 seeking the payment of the excess rebate amount in cash. The Hon'ble Tribunal vide Order No. A/10160-10162/2019 dated 23.01.2019 dismissed the appeals as non-maintainable and granted liberty to the applicant to approach the Revisionary Authority. The relevant portion of the said Order is reproduced below: -

"4. I have gone through rival submissions. I find that Section 35(b) describes the nature of cases in which appeal can be filed before CESTAT. The first proviso to Section 35(b) prescribes the category of cases where no appeal can be filed before the Appellate Tribunal. Clause (b) of the proviso reads as follows: -

"(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;"

Consequently, CESTAT does not have jurisdiction to entertain the appeal filed in cases relating to the rebate of duty of Excise. In the said cases, the appeal can be filed to the Revisionary Authority in the Central Government in terms of Section 35(ee) of the Central Excise Act. Consequently, the appeals are dismissed as non maintainable and liberty is granted to appellate to approach the Revisionary Authority."

5. Subsequent to the said CESTAT Order, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal along with an application for condonation of the delay in filing the same. The applicant submitted that the impugned Order-in-Appeal was contrary to the transitional provisions under Section 142(3) of the CGST Act, 2017 which mandated that the grant of refund of any amount claimed before, on or after the appointed date, in cash notwithstanding Section 11B(2) of the Central Excise Act, 1944 and that by granting whole/part of the refund claim by way of re-credit amounted to gross violation of the transitional provisions. They sought to rely on the following cases - Jewel Packaging P Ltd vs CCE [2010 (253) ELT 622 (Tri-Ahmd)] and CCE vs Maini Precision Products P. Ltd. [2010(252) ELT 409] (Tri-Bang)]. They also placed reliance on the Circular No.37/11/2018-GST dated 15.03.2018 in support of their case that the amounts allowed as re-credit to their Cenvat credit account should be paid to them in cash. The submissions were similar with respect to the all the Orders-in-Original covered by the impugned Order-in-Appeal. The applicant also made further submissions vide their letter dated 11.01.2023 wherein they submitted that in the Department in the subsequent cases of refund have sanctioned the entire amount in cash.

In view of the above they requested that the impugned Order-in-Appeal be set aside and the rebate may be paid to them in cash.

6. Personal hearing in the matter was held on 11.01.2023 and Shri P. L. Audichya, Additional General Manager (Finance), of the applicant firm appeared and gave additional written submissions and submitted that excess duty paid was over FOB value was required to be refunded in the manner it was paid. He further submitted that in terms of Section 142(3) of the CGST Act this amount should be refunded in cash. He further requested for interest on the amount.

7. Government has carefully gone through the relevant records available, the written and oral submissions and also perused the relevant Orders-in-Original and the impugned Order-in-Appeal. Government notes that the applicant has filed the subject Revision Application on 14.03.2019 which is within 90 days of the date of the Order dated 23.01.2019 of the Tribunal.

Given the circumstances, Government condones the delay in filing the present Revision Application.

8. Government observes that that the issue involved is whether the amounts paid in excess/erroneously by the applicant, which has been allowed to them as re-credit in their Cenvat credit account should be paid in cash in terms of Section 142 of the CGST Act, 2017. The lower authorities have ruled against the applicant, which they don't agree with, hence this application. Government notes that the Hon'ble Tribunal held that this issue being one of rebate, it would have no jurisdiction and allowed the applicant to file the present Revision Application.

9. Government notes that at this juncture it is pertinent to examine Section 35EE and Section 35B of the Central Excise Act, 1944, which provide for Revision by the Central Government and specifies the nature of cases that would lie before the Central Government, respectively. Relevant portions of the same are reproduced below:-

(i) Section 35EE - Revision by Central Government -

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the **first proviso to sub-section (1) of section 35B**, annul or modify such order :*

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]..."

(ii) Section 35B - Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the ¹[Principal Commissioner of Central Excise or Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the [Commissioner (Appeals)] under section 35A;

....

... [Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:

[emphasis supplied]

On examining the first proviso to Section 35B of the Central Excise Act, 1944, Government notes that it does not include disputes relating to the eligibility of Cenvat credit or the refund of such disputed amount under the CGST Act, 2017, which is the issue involved in the present case. Given the above, Government notes that the issue for decision in the instant case is not covered under the clauses (a) to (d) of the first proviso to Section 35B of the Central Excise Act, 1944. Thus, Government finds that in terms of Section 35B and Section 35EE of the Central Excise Act, 1944, it does not have jurisdiction over the dispute involved in the present *lis*.

10. Government notes that it was incorrectly submitted before the Hon'ble CESTAT that the issue involved was that of 'rebate' leading the Tribunal to hold that it did not have jurisdiction. Government notes that in the present case the rebate of duty paid on goods exported has been allowed and paid to the applicant; the dispute is restricted to the manner of refund of those

amounts which were paid in excess or erroneously paid, which requires to be decided in terms of Section 142 of the CGST Act, 2017. As discussed above, Government finds that in terms of Section 35B and Section 35EE of the Central Excise Act, 1944, it does not have jurisdiction to decide issues under the CGST Act, 2017.

11. In view of the above, Government dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ¹²³⁻125/2023-CX (WZ) /ASRA/Mumbai dated 15/03.2023

To

M/s Gujarat Narmada Valley Fertilizers & Chemicals Ltd.
No. 259, 260/P, 231/P, GIDC Dahej - II Indl. Estate,
At & Post Rahiyad, Taluka Vagra,
District Bharuch - 392130.

Copy to:

1. The Pr. Commissioner of GST & Central Excise, Vadodara - II
Commissionerate, GST Bhavan, Subhanpura, Vadodara - 390 0231.
2. Commissioner (Appeals), CGST & Central Excise, Vadodara, GST
Bhavan, 1st floor Annex., Race Course circle, Vadodara - 390 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.