

REGISTERED SPEED POST AD



**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. 195/223/WZ/2019-RA

1735

Date of Issue: 23.03.2023

ORDER NO. 173 /2023-CX(WZ)/ASRA/MUMBAI DATED 23.03.2023
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. Gangwal Chemicals Pvt. Ltd.,
Building No. A- 6, Godown No. 4,
Bhagwan Sheth Estate,
Gundavali Village,
Bhiwandi, Thane-421302.

Respondent : Principal Commissioner of Central Excise, Bhiwandi.

Subject :- Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
PVNS/449/Appeals Thane/BW/2018-19 dated 14.03.2019 passed by
the Commissioner (Appeals Thane), CGST & Central Excise, Mumbai.

ORDER

These Revision Applications have been filed by M/s. Gangwal Chemicals Pvt. Ltd., Building No. A- 6, Godown No. 4, Bhagwan Sheth Estate, Gundavali Village, Bhiwandi, Thane-421302 (hereinafter referred as the applicant) against the Order-in-Appeal No. PVNS/449/Appeals Thane/BW/2018-19 dated 14.03.2019 passed by the Commissioner (Appeals Thane), CGST & Central Excise, Mumbai.

2. The brief facts of the case are that the applicant, M/s. Gangwal Chemicals Pvt. Ltd., are holders of Central Excise Tax Registration Number AAACG1483EXM001. They filed an application on 07.11.2017 for refund of unutilized Cenvat Credit resulting out of export of goods to SEZ units amounting to Rs. 2,83,159/- being unutilized balance in their CENVAT account for the period from April, 2017 to June, 2017 under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE (NT) dated 18.06.2012 as amended. After due process in law the adjudicating authority vide Order-in-Original No. R- 350/17-18 dated 25.03.2018 observed that the applicant had failed to file ER1 returns for two of the months viz. April and May, 2017 of the quarter for which the claim had been filed. Accordingly, he rejected the refund claim.

3. Being aggrieved by the aforesaid Order in Original dated 25.03.2018, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. PVNS/449/Appeals Thane/BW/2018-19 dated 14.03.2019 (impugned Order) dismissed the appeal filed by the applicant and upheld the Order in Original.

4. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

4.1 The claim was actually filed by the Applicant before expiry of one year time period:-

During pre-GST regime, the appellant were regularly filing their refund claims since 4-5 years with the Office of Assistant Commissioner situated at 2nd floor, Chandrama Building, Valipeer Road, Kalyan. So, the appellant filed the subject refund claim also at the same address as usual on 20.10.2017. In-ward section of the office gave us stamped copy of forwarding letter as token of the receipt of the claim. On 24.10.2017, we received a telephonic call from the office at Kalyan informing that in GST regime, Assessee registered under PIN code 421302 falls under newly created division office i.e. Division-IV, Bhiwandi Commissionerate situated at 2nd floor, Dhamankar Naka, Bhiwandi. Hence Applicant required to submit the claim in Division-IV, Bhiwandi. Appellant were directed to collect the claim and bring along with them stamped copy of forwarding letter. Thereafter, Applicant were returned the claim filed at Kalyan office and departmental officer put a cross sign on the stamped forwarding letter as a token of returning the claims back. Then, Applicant visited the office situated at Bhiwandi on same day i.e. 24.10.2017 at approx 05:30 PM and submitted the said claim.

During the whole procedure, there is no fault of the appellant. The appellant find the claim in the same office from which they were filing their claims sanctioned since last 4-5 years. After the implementation of GST, It was the department's internal decision/ policies to change the office address) Jurisdiction. Appellant were never informed about the same and not the department published the same in any newspaper through which appellant could have come to know about the change in their Jurisdictional office.

Further, inward section departmental staff at Kalyan Office did not check for jurisdiction of the Applicant on the same day ie. 20.10.2017. So the appellant were not informed about the jurisdiction change and they filed the claim in erstwhile office. Departmental staff received the claim and informed about the change in jurisdiction after four days time. So the delay in filing the claim at right jurisdiction is due to Department fault only. Had

the appellant been informed about the same on 20.10.2017, the ARE-1 would not have been time- barred.

Further right procedure would have been that old office transfer the claims to new office itself but the department did not follow the procedure. Appellant can not be punished/ penalised in form of rejecting the claim for non-following of the procedure by the Department.

Appellant would like to rely on the order passed by Honorable High Court of Gujarat in the case of M/s. AIA ENGINEERING LTD. Vs. COMMISSIONER OF C.EX wherein it is clearly cited that "*Since the original application for refund was filled within time, though before wrong authority, it can not be said that the said application was barred by limitation.*"

Appellant would also like to rely on the Honorable CESTAT, Mumbai, decision in the case of M/s. Singh International vs. Commissioner of Customs (General), which is in favour of the appellant.

Above judgments are squarely applicable to the subject refund claim also. In view of above, it is clear that there is no fault at the appellant level and actual date of filing the claim is 20.10.2017 instead of 24.10.2017 as alleged by the sanctioning authority. Hence, the ARE1 is not time barred and sanctioning authority failed to pass the order on basis of merits.

4.2 The Sanctioning Authority wrongly doubted about the authenticity of the receipt Stamp and has violated the principle of natural justice also:

The sanctioning authority has alleged that receipt copy dated 20.10.2017 produced to him bears an indistinct stamp and it is not clear as to who has received the letter.

For this appellant would like to produce copy of receipt of the claim at new divisional office, Bhiwandi on the basis of which Sanctioning Authority has processed the claim. This receipt copy also has stamp only and no

officer has put sign on the receipt letter. If it were the case that sanctioning authority doubt the receipt date without sign of receiver, the claim submitted at new office should not have been processed at all. The same was the process at erstwhile office also and they also used to put stamp only as token of receipt. So, it is again a fault at the departmental level and appellant cannot be blamed for the same. Further, appellant would like to state that, they never received any deficiency memo/query/ Show cause Notice about the same from Sanctioning Authority and appellant were never given a chance to put their view by Sanctioning Authority. In-fact appellant received only a telephonic call on 18.04.2018 informing about the situation and were ordered to submit the reply in their support on same day i.e. 18.04.2018. In hurry, Applicant could produce and state what was easily accessible to them. Hence Sanctioning Authority has violated the principle of natural justice to the appellant. In view of the above, order passed by Sanctioning Authority for rejection of the said amount should be set aside.

In view of the above, Applicants humbly request to allow the refund of Rs.2,83,159/-.

5. Personal hearing in this case was held on 24.11.2022 Shri Prashant Shirsulla, G.M.(Finance) appeared on behalf of the applicants and submitted that the claim is within time limit hence requested to allow the same.

6. Government has carefully gone through the relevant case records oral and written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government finds that the issue involved in the present case is limited to deciding whether the applicant is eligible for sanction of Rs. 2,83,159/- which was rejected as the applicant failed to file ER1 returns for two of the months viz. April and May, 2017.

8. Government finds that the Asst. Commissioner Central Tax, Division IV in para 10 has observed that:

"10. I refer to the operative notification and I find that the information of the total value of the exports, the total turnover etc. has to be verified from the ER1 returns

However, I find that the claimant had failed to file ER1 returns for two of the months viz. April and May 2017 of the quarter for which the claim had been filed. In their reply they have stated that they were unable to file the returns due to some technical glitch and were advised by the Dept to file manual returns. I have also seen the acknowledgement given by them that says that they are filing returns (manual) for the period January 2017 to May 2017. This statement is slightly contrary to the facts as the claimant had infact filed returns on the ACES portal for the months of January 2017 to March 2017. The reason why they chose to file manual returns is not forthcoming."

9. Government find that Commissioner(Appeals) in Para 9 of his order as observed that :

"9. After considering all the facts of the case available on records, my findings are placed as below:

- (i) *I find that, even though the appellant has claimed the ground that their refund claim is barred by limitation due to late filing of ARE-1 in wrong jurisdictional office of the Department, the same is not at all considered as the ground for rejection by the Adjudicating Authority Contrarily, it is observed that, the refund claim has been rejected by the Adjudicating Authority, in terms of non-adherence to the provisions of the operative Notification No: 27/2012-CE (NT) dated 18.06.2012. The said Notification dated 18.06.2018 has clearly prescribed at Para 2- the Safeguards, conditions and limitations' mandatorily governing the sanction of refund of Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004, Said notification requires that the value of goods cleared for export during the quarter to be the sum total of all the goods cleared by the exporter for exports during the quarter, as per the monthly or quarterly return filed by the claimant; and also requires that the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant. These aforesaid mandatory safeguards and conditions as prescribed by the said Notification are required to be verified from the ER-1 Returns filed online by the claimant, however as the same were not filed on the ACES portal, the total value of goods cleared and the value of goods cleared for export, during the quarter cannot be verified due to absence of ER-1 Returns. Hence, I find that the refund claim has been rightly rejected*

by the Adjudicating Authority due to non-adherence by the Appellant of the mandatory provisions of the operative Notification No: 27/2012-CE (NT) dated 18.06.2012. Held Accordingly.

(ii) Further, I also find that the appellant had failed to file ER-1 Returns on the ACES portal, for two out of the three months ie. April and May 2017 in the quarter for which the claim has been filed, as required by the provisions of Central Excise laws. In their reply, they have stated that they were unable to file the returns due to some technical glitches and that they were advised by Dept to file manual returns, hence they have filed manual returns for period January 2017 to May 2017; however appellant have not provided any valid reasons or documentary proof evidencing the same. Held Accordingly.”

The applicant filed an application on 07.11.2017 for refund of unutilized Cenvat credit resulting out of export of goods to SEZ units, which indicates that the applicant had sufficient time available for filing the revised return and submitting the same to the adjudicating authority. Government notes that the applicant, however, filed these revised returns before the Jurisdictional Range, purportedly because they were not able to file return due to technical glitches. The explanation provided by the applicant there were technical fault / server error due to which the return could not be filed successfully is unconvincing, particularly in light of Circular No. 956/17/2011-CX dated 28.09.2011 which provides detailed instructions while facing such issues. The applicant also failed to submit any documentary proof to evidence their inability to file their return due to technical glitches in absence of such evidence, benefit cannot be granted to the applicant. The contentions put forth by the applicant are not relevant to the case. Government notes that the issue involved in the present case was not of a technical or complicated nature wherein filing online revised returns was not possible. Thus, Government does not find any merit in this plea of the applicant and rejects the same.

10. Further, Government finds that here it is not the case that the applicant filed manual ER1 returns to jurisdictional Range and simultaneously filed online returns or submitted documentary evidence of having failed to do so, in which case the argument of the applicant, would hold good. Government finds that in this case, accepting the filing of

manual revised returns before the Jurisdictional Range, would lay down a bad precedent, as giving credence to such a practice would result in sanctifying a process which can be used to circumvent the procedure prescribed by laws governing grant of refund.

11. Given the above, Government finds no reason to interfere with the Order-in-Appeal dated 14.03.2019. The Revision Application filed by the applicant is rejected.


23/3/23
(SHRAWAN KUMAR)

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

ORDER No. 173 /2023-CX (WZ) /ASRA/Mumbai Dated 23.03.23

To,

M/s. Gangwal Chemicals Pvt. Ltd.,
Building No. A- 6, Godown No. 4,
Bhagwan Sheth Estate,
Gundavali Village,
Bhiwandi, Thane-421302.

Copy to:

1. Principal Commissioner CGST & Central Excise, Bhiwandi.
2. Commissioner (Appeals Thane), CGST & Central Excise, Mumbai.
3. Sr P.S. to AS (RA), Mumbai.
- ~~4. Guard file.~~
5. Spare Copy.