

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. 195/18/WZ/2022-RA / 1941

Date of Issue: 31.03.2023

ORDER NO: 190 /2023-CX(WZ)/ASRA/MUMBAI DATED 27.03.2023
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.
DL/298/Appeals Thane/BW/2021-22 dated 15.03.2022 passed by
the Commissioner, CGST & Central Excise Appeals Thane.

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. DL/298/Appeals Thane/BW/2021-22 dated 15.03.2022 passed by the Commissioner, CGST & Central Excise Appeals Thane.

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 24.10.2017 for refund of unutilized Cenvat Credit resulting out of export of goods to SEZ units amounting to Rs. 21,17,402/- being unutilized balance in their CENVAT account for the period from October, 2016 to December, 2016 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. 18/JS/Gangwal/2021-22 dated 11.10.2021 observed that ARE1 No. 16/16-17 dated 20.10.2016 which the applicant had included in refund calculation, the goods have been certified to have entered into SEZ on 24.10.2016. Hence last date for filing of refund as per sub rule(1) of Section 11B of Central Excise Act, 1944 was 23.10.2017 however, the refund claim was filed on 24.10.2017 and hence rejected amount of Rs. 7,04,210/- as time barred.

3. Being aggrieved by the aforesaid Order in Original dated 11.10.2021, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. DL/298/Appeals Thane/BW/2021-22 dated 15.03.2022 (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 on 20.10.2017 i.e. before expiry of one year time period: -

During pre-GST regime, the Applicant 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 Applicant 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.

They submitted the same on 20.10.2017, Friday and 21.10.2017 Saturdays and 22.10.2017 Sunday are holiday. On 23-10-2017, afternoon we received a telephonic call from the office at Kalyan informing that in GST regime, Assesses 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 is required to submit the claim in Division-IV, Bhiwandi. Applicant 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 token of returning the claims back. Then, Applicant visited the office situated at Bhiwandi on 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 Applicant. The Applicant filed the claim in the same office from which they were getting 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. Applicant were never informed about the same and nor the department published the same in any newspaper through which

Applicant could have come to know about the change in their Jurisdictional office.

Further, in-ward section departmental staff at Kalyan Office did not check for jurisdiction of the Applicant on the same day i.e. 20.10.2017. So the Applicant 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 Applicant 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. Applicant can not be punished/ penalized in form of rejecting the claim for non- following of the procedure by the Department.

Applicant 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 filed within time, though before wrong authority, it can not be said that the said application was barred by limitation."

Applicant 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 Applicant.

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 Applicant 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 Applicant 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 Applicant can not be blamed for the same. Further, Applicant would like to state that, they never received any deficiency memo/query/ Show cause Notice about the same from Sanctioning Authority and Applicant were never given a chance to put their view by Sanctioning Authority. In-fact Applicant 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, appellant could produce and state what was easily accessible to them. Hence Sanctioning Authority has violated the principle of natural justice to the Applicant.

In view of the above, Applicants humbly request to allow the refund of Rs.7,04,210/- The Applicants do wish to be heard in person and request to pass an order on the basis of merits of the case,

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 was originally filed on 20.10.2017 with the Kalyan Division. However, on being informed about change in jurisdiction, they filed the

claim with Bhiwandi Division on 24.10.2017. He submitted even otherwise, if calculated by excluding the day of export, their claim is within time limit.

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. 7,04,210/- on ARE1 No. 16/16-17 dated 20.10.2016 which was purportedly filed by the applicant on 20.10.2017.

8. Government finds that the applicant has contended that they had filed the claim on 20.10.2017 with the earlier office from which they used to get their refunds sanctioned and on being advised to file the claim with Division IV they did so on 24.10.2017. This case appears to be where claim was accepted at older Division on Friday (20.10.2017) and on Monday (23.10.2017) returned back before any entry in Inward register.

9. Government finds that the General Clauses Act, 1897 is still in force and hence finds that it pertinent to examine Section 9 of the same before proceeding any further; the relevant portion is reproduced below: -

"9. Commencement and termination of time.—(1) In any 1 [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to". (2) This section applies also to all 2 [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

[emphasis supplied]

A reading of the above indicates that the above provision of the General Clauses Act, 1897 will be applicable to all Central Acts and Regulations made after the commencement of the said Act and hence Government finds that the Central Excise Act, 1944 having come into effect after the General Clauses Act, 1897, the provisions contained in Section 9 of the same will be applicable to the instant case too. Further, Government notes that Section 9 of the General Clauses Act, 1897 clearly states that while computing the commencement of a time period involving a series of days indicated by the word 'from' in any Central Act or regulation, the first day shall be excluded while computing such period. Government notes that Section 11B of the Central Excise Act, 1944 states that a refund/rebate application should be made '*before the expiry of one year from the relevant date*', in this case the relevant date being the date on which the goods have been certified to have entered into SEZ. Given the above, Government finds that in the case ARE1 No. 16/16-17 dated 20.10.2016 is certified to have entered into SEZ on 24.10.2016, the first day i.e. 24.10.2016, has to be excluded while computing the period of one year specified by Section 11B of the Central Excise Act, 1944. Thus, Government finds that the one year period when computed from 25.10.2016 onwards, will expire on 24.10.2017 and hence the rebate claim filed by the applicant on 24.10.2017 will be within the time limit prescribed by Section 11B of the Central Excise Act, 1944 and accordingly holds so. Government finds that the Commissioner (Appeals) erred in holding that the rebate claim in respect of the ARE1 No. 16/16-17 dated 20.10.2016 was time barred and sets aside the portion of the impugned Order-in-Appeal holding so.

10. Government finds that the Commissioner (Appeals) has recorded that the basic facts of the rebate claim are not in dispute. The only ground of rejection was that the rebate claim pertaining to ARE1 No. 16/16-17 dated 20.10.2016 as detailed above, was found to be time barred, which has now been found to be incorrect. In view of the same, Government finds that the applicant will be eligible to the entire amount of rebate claimed by them vide the claim in question and accordingly holds so.

11. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the applicant to present their case.

12. The subject Revision Application is allowed.


(SHRAWAN KUMAR)

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

ORDER No. 190/2023-CX (WZ) /ASRA/Mumbai Dated 27.03.23

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.