

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. 195/222/WZ/2019-RA / 1946

Date of Issue: 31.03.2023

ORDER NO. 191 /2023-CX(WZ)/ASRA/MUMBAI DATED 03.03.2023
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/464/Appeals Thane/BH/2018-19 dated 26.03.2019 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/464/Appeals Thane/BH/2018-19 dated 26.03.2019 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 24.10.2017 for refund of unutilized Cenvat Credit resulting out of export of goods to SEZ units amounting to Rs. 25,93,827/- being unutilized balance in their CENVAT account for the period from January 2017 to March 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-349/17-18 dated 19.04.2018 observed that there was a mismatch in closing balance of the Cenvat Credit shown in the month of February, 2017 and opening balance of March, 2017 resulting in claimant taking an extra amount of credit of Rs. 3,48,560/- and accordingly he sanctioned an amount of Rs. 24,70,851/- and rejected amount of Rs. 1,22,976/-.

3. Being aggrieved by the aforesaid Order in Original dated 19.04.2018, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. PVNS/464/Appeals Thane/BH/2018-19 dated 26.03.2019 (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 Applicants have not availed excess CENVAT Credit of Rs. 3,48,913/- and have manually submitted the revised return for the month of February, 2018 to the Jurisdictional Range Office:

Initially, Applicants had filed ER-1 return for the Month of February, 2018 wrongly with the CENVAT Closing balance of Rs. 70,10,364/- Thereafter, the Applicant realized the mistake that they had availed short credit of Rs. 3,48,913/- in the return and tried to file revised return for the Month of February, 2018. But this time due to technical fault/ server error, return could not be filed successfully.

Hence the Applicants, contacted the e-helpline desk telephonically informing about the same. Helpline desk advised them to contact the Jurisdictional Range Office. Then they contacted the Jurisdictional Range Office who directed to submit the manual returns,

Applicants would like to bring into notice, the contents of Circular No. 956/17/2011-CX dated 28.09.2011, point 2 under the head responsibility of Assessee which reads as under:

In case the assessee experiences any difficulty in transacting in ACES such as filing of return, the assessee may lodge a complaint with the ACES Service Desk or the department by e-mail and/or by telephone, details of which are given below and obtain a ticket no, as an acknowledgement from the department. However, mere lodging of complaints with the ACES service desk will not be a valid ground to justify late filing of returns. If the difficulty is not on account of problems at the assessee's end, and can be clearly attributed to the department's IT infrastructure such as problems in accessing Central Board of Excise and Customs' ACES application due to server, network or application being down, proportionate time will be deducted from the date of uploading of successfully "filed" returns to ascertain the actual date and time of filing of the return. Since the department maintains logs of such technical failures, in case of any dispute, the decision of the department will be final.

Further Applicants relied on the Hon'ble CESTAT Delhi judgement in the case of M/s. Rado Rexine Co. Ltd. Vs. Commissioner of C.Ex, Delhi-IV where CESTAT has clearly mentioned that Applicant can not be blamed for

not filing the ER1 returns electronically due to system problem when the Applicant have filed the return manually.

The ratio of the judgment is squarely applicable in the present case also as the Applicants were not able to file the return due to technical glitches and have submitted the manual return to jurisdictional range office. Copy of the acknowledgement (signed by Inspector) is enclosed herewith for ready reference.

Case law-2014(310)E.L.T. 955(Tri.- Del.). Further, Applicants would place reliance on the following case law- 2014(310) E.L.T. 812 (Tri-Mumbai) In the above case of M/s. Graintoch Ind. Ltd. Vs. Commissioner of C.Ex., Aurangabad Hon'ble CESTAT, Mumbai had provided relief to the Applicants on the ground that some delay in filing the returns, which is neither deliberate, nor there is any defiance of law. The Assessee had filed the returns regularly so no case of deliberate disobedience of provisions of law is made out. The judgment is equally applicable in the present case also as there has been no deliberate disobedience of provisions of law, and nor been alleged in the order.

4.2 Further, the sanctioning authority has alleged that the Applicants have not produced revised return copy.

Applicants would like to produce acknowledged copy of their reply, where they had submitted the revised return copy to the sanctioning authority. Thus, Sanctioning authority has failed to pass an order on the basis of merits and records submitted by the Applicants. Further as discussed above, the revised return copy had been submitted to the Jurisdictional Range Office. The Sanctioning Authority could have called for the same from Range Office.

4.3 Order passed by the Sanctioning Authority is full of ambiguities and hence not sustainable:

Sanctioning Authority in the findings has clearly stated that the jurisdictional officer has verified following figures from the ER1s:

Total value of goods cleared for export (SEZ)- Rs.21498476/-. Total CENVAT Credit Taken - Rs.7358924 in place of 7359277/- (mentioned in annexure)
Total turnover - Rs.60996057/-.

Thus as per O-i-O itself, the assessing officer i.e. Range Superintendent has verified that the Applicants are eligible for CENVAT Credit of Rs. 73,58,924/-.

Further, vide para of the O-i-O Sanctioning Authority himself has accepted that the Applicants have fulfilled all the conditions specified in the Notification No. 27/2012 dated 18.06.2012, issued under Rule 5 of Cenvat Credit Rules, 2004 for the refund claim of Rs. 25,93,827/-.

In view of the above, it appears that the Sanctioning Authority himself has confirmed/ accepted the authenticity of the refund claim and eligibility of CENVAT Credit of Rs. 73,58,924/-. Hence the O-i-O passed for rejection of the amount of Rs. 1,22,976/- is not legal and correct and hence not sustainable.

4.4 The Assessing Officer i.e Jurisdictional Range Office has already accepted the revised return and correctness of the return has not been doubted:

The revised return was submitted to the Jurisdictional Range Office manually and Inspector received the same which means that the revised return submitted manually is as good as electronically filed return. Hence, once the Range Office has accepted the return, it is not legal and correct on the Sanctioning Authority part that Applicants are being penalized/punished for the same issue by way of rejecting the refund.

Further, it is almost one year time since the submission of revised manual return and the Range Office has not doubted about the correctness of the revised return till now.

In view of above, the Applicants have correctly availed the CENVAT Credit of Rs. 73,58,924/- during the fourth Quarter and eligible for refund of Rs. 1,22,976/-.

4.5 The subject claim for refund was filed in Division-IV, Bhiwandi Commissionerate i.e. before sanctioning authority on 24.10.2017. As per CBEC supplementary instructions 2005, Chapter 9, para 3.2, it is clearly mentioned that any deficiency in the claim to be pointed out within 15 days of the receipt of the claim. However, in the present case deficiency was communicated to the Applicant in approximate 3 months time. Had the Sanctioning authority told about the deficiency within time period as per law or even within 2 months time, the Applicants would have carry forwarded the credit in GST through TRANS-I form which was open till 27.12.2017. Now if at this stage, the Sanctioning Authority who has not followed the law and not taken into cognizance of the decision of Jurisdictional Range Office who had already accepted the revised return, rejects the amount, it would be a great loss to the Applicant as the credit will lapse as per GST Law and all due to no fault of the Applicants.

The Applicants have to suffer due to non harmony of the decisions of two authorities i.e. Sanctioning authority and Jurisdictional Range Office. It is not legal and correct.

In view of the above, Applicants humbly request to allow the refund of Rs. 1,22,976/-.

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 Opening & Closing balance has since been rectified, therefore, rebate may be allowed.

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. 1,22,976/- due the purported mismatch in the closing balance of the Cenvat credit shown in the Month of February, 2017 and the opening balance of March, 2017 resulting in the applicant taking an extra amount of credit or Rs. 3,48,560/-.

8. Government finds that the Asst. Commissioner Central Tax, Division IV at para 10 of his order has observed that:

“....

I also find that there was a mismatch in the closing balance of the Cenvat credit shown in the month of February 2017 and in the opening balance of March, 2017 resulting in the claimant taking an extra amount of credit of Rs. 3,48,560/-, this fact was brought to the notice vide letter of even no. dated 15.01.2018 and also in the show cause dated 8.3.2018. To both these observations, the claimant had given an identical reply that the excess credit was not excess at all but had been shown incorrectly in the ER1 for February, 2017 and that they had filed a revised return for this month correcting the error. However, the claimant has not produced a copy of the return nor can the return be viewed on the ACES platform. Accordingly, I hold that the claimant has claimed excess credit of Rs. 3,48,560/- and this amount has to be factored in the formula.....”

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:

(a) I find that the appellant has not contested the department allegation, but on the contrary has accepted that there is a mismatch in their

closing balance of Cenvat Credit shown in the month of February 2017 and in their opening balance of March 2017 resulting in the appellant taking an excess amount of Cenvat credit of Rs.3,48,913/ Therefore, it is factual that the refund claim is excess to this extent.

(b) Regarding appellant's contention that they tried to file a revised return, but due to technical fault/server error, their return could not be filed successfully, it is seen that the CBEC's Circular No: 956/17/2011-CX dated 28.09.2011 has laid down the procedure to be adopted in case of transacting ACES, and has advised the assesseees to lodge a complaint with the ACES service desk by telephone or email, in the event of failure to file the returns on ACES portal. However, despite ample opportunities provided to them, the appellant have not produced copy of any such complaint filed by them. No corroborative evidence of appellant encountering difficulties in transacting ACES portal, in form of screen shots, print outs of email etc. have been produced to indicate their difficulties. In the absence of any evidence to prove their difficulties, this claim is without any factual basis and hence cannot be accepted."

The applicant filed an application on 24.10.2017 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 Inspector, 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 case laws cited by the applicant are not applicable to the instant case because the ER 1 returns were filed electronically albeit filed late, whereas in the impugned case the applicant has failed to file returns electronically and 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 of these case laws cannot be granted to the applicant. 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 find no reason to interfere with the Order-in-Appeal dated 26.03.2019. The Revision Application filed by the applicant is rejected.


(SHRAWAN KUMAR)

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

ORDER No. 191 /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.