

REGISTERED SPEED POST



**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. 195/124/17-RA

| 2023 |

Date of Issue:

| 20.04.2023

ORDER NO. 226 /2023-CX (WZ) /ASRA/Mumbai DATED 06.4.2023 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. Covestro India Pvt. Ltd.,
(Formerly known as Bayer Material Science Pvt. Ltd.),
Plot No. 3501-3515, 6301-6313 &16
Mtr. Road / B2, GIDC Industrial Estate,
Ankleshwar, Dist-Bharuch 392002.**

Respondent : Pr. Commissioner of CGST & CE Vadodara-II.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCESA-VAD(APP-II)/VK-330/2016-17 dated 24.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara-II.

ORDER

This revision application is filed by M/s. Covestro India Pvt. Ltd., (Formerly known as Bayer Material Science Pvt. Ltd.), Plot No. 3501-3515, 6301-6313 & 16 Mtr. Road / B2, GIDC Industrial Estate, Ankleshwar, Dist-Bharuch 392002 (hereinafter referred to as "the applicant") against Order-in-Appeal No. CCESA-VAD(APP-II)/VK-330/2016-17 dated 24.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara-II.

2. The issue in brief is that the applicant M/s. Bayer Material Science Pvt. Ltd. (Now known as M/s. Covestro India Pvt. Ltd.), had filed 46 rebate claims under the provisions of the Rule 18 of the Central Excise Rules, 2002; read with Notification No.19/2004-CE (NT), dated 06.09.2004 with the Assistant Commissioner, Central Excise & Customs, Division-II, Ankleshwar. The original authority vide Order in Original No. ANK-II/3206 to 3251/Rabate/2014-15 dated 26.03.2015 rejected the rebate claims inter alia on the grounds that the applicant had mentioned Central Excise Registration No. AAABC2419HEM030 in ARE-1s on application basis and no Registration was granted by the department and as the goods were removed under self removal procedure and applicant had not submitted triplicate, quadruplicate and quintuplicate copy of the ARE-1 in original alongwith Invoice and Packing List to Range Office within 24 hours as per Sr. No. (3)(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004.

3. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara-II who vide the impugned Order-in-Appeal No. CCESA-VAD(APP-II)/VK-330/2016-17 dated 24.10.2016 upheld the order dated 26.03.2015 rejected the appeal.

4. Being aggrieved, the applicant has sought revision of Commissioner (Appeals)'s Order mainly on the ground that:

4.1 The applicant has not contravened any provision regarding issuance of Central Excise Registration Certificate Application dated 20-05-2014 for the Central Excise registration was not rejected on account of any mistake/contravention made by the applicant:

4.1.1 The applicant submitted that it is undisputed fact that the goods have been exported and the duty was paid on such finished goods and in such a situation, rebate claims are required to be sanctioned. The applicant also further stated that they submitted first application on 20.05.2014 but did not get the response immediately and the certificate was also not issued immediately. As per law, the Central Excise Registration Certificate is to be issued within 7 days from the date of submission of application. Since they had to export as per time bound schedule, they started to export the finished goods after seven days of submission of the said application through ACES in good faith. Since the certificate was not issued, the applicant company did not avail cenvat credit on the inputs received, but as precautionary measures, they paid Central Excise duty through challans. They approached the Division office time and again, requesting to issue Central Excise Registration Certificate bearing No. AAACB2419HEM030 but in vain. Suddenly, the applicant received letter dated 30.06.2014 intimating rejection of application /registration. However, no speaking order in this regard was issued. It is not the case of the department that the application dated 20-05-2014 was rejected on account of any mistake or contravention of any provision of law, made by the applicant but the application was rejected for some unknown reason that has never been communicated to the applicant.

4.1.2 Meantime the applicant had removed various consignments of the finished goods on payment of duty through challans. On receipt of the said letter dated 30.06.2014, the applicant had immediately filed revised application and thereafter the registration certificate dated 03.07.2014 was

issued under letter dated 17.07.2014. Meantime also, the applicant had removed various consignments of the goods for export purpose on payment of duty. Thereby the issuance of registration certificate was in process. In any case, the facts that the exports of the goods under valid ARE-1s and the payment of duty on such goods, are not in dispute. As a matter of fact, the applicant had acted in a bonafide manner right from the beginning. It was not the fault of the applicant, for which registration certificate was not issued immediately. There was no lapse on the part of the applicant for late issuance of registration certificate. There was clear intention on the part of the applicant to export the finished goods and to pay duty on export consignments only after filing application for registration certificate.

4.1.3 Applicant relied on the following case laws:

- i. Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner 1991 (55) E.L.T. 437 (S.C.)
- ii. Tata Tea Ltd., reported in 1998 (103) ELT 190 (GOI)
- iii. Shantilal & Bhansali reported in 1991 (53) ELT 558 (GOI)

4.1.4 So far as other rebate claims in respect of the exports which were carried out after 30-06-2014 are concerned i.e. after obtainment of certificate dated 03-07-2014, the applicant submitted that such rebate claims ought to have been sanctioned as the same have been rejected on very minor procedural grounds i.e., the applicant had mentioned the reference of ECC No. AAACB2419HEM030 though the ECC No. AAACB2419HEM031 was available; in some cases, triplicate, quadruplicate and quintuplicate copies of ARE-1s which were required to be submitted within 24 hours from the date of export, were not submitted within 24 hours but submitted after few days. In this context, it is submitted that for such a small reason, rebate claims cannot be denied as incorrect reference of ECC no. on the ARE-1 or late submission of triplicate, quadruplicate and quintuplicate copies of ARE-1s, does not change the fact of exports and payment of duty. Thus, such lapse may be considered as procedural lapse and rebate claims may please be sanctioned. This kind of cases, wherein such procedural lapses were involved, have been dealt with by the different

judicial authorities and sanctioned the rebate claims holding that rebate claims cannot be denied for the procedural lapses. In this regard, the applicant has discussed the legal position at length, relying upon various case laws. In view of such legal position, it was required for the appellate authority to allow the appeal at least to the extent of the rebate claims wherein the incorrect ECC No. has been mentioned and copies of the ARE-1 have been submitted delayed by few days the facts regarding export and payment of duty have not been disputed.

4.2 As regard Registration Certificate No. AAACB2419HEM031 dated 03-07-2014:

The applicant further submit that the registration certificate No. AAACB2419HEM031 dated 03-07-2014 was signed by the concerned authority on 03-07-2014 but since the same was handed over/provided to the applicant on 17-07-2014, it was mentioned in the letter under which the said certificate was provided, that the same will be effective from 17.07.2014. No reason was mentioned to make the said registration certificate effective from 17-07-2014. The registration certificate is to be made effective from the date of its issuance or after 7 days from the date of application filed, whichever is earlier. Legally, the Assistant/Deputy Commissioner does not have powers to give effective date of the registration certificate particularly when there was no fault of the applicant company. It is also not the case of the department that on account of some documents/details which were required from the applicant and not submitted and for this reason, the registration certificate was issued delayed. If the said certificate would have been issued to the applicant after three months after submission of application, the Assistant/Deputy Commissioner would have given the effective date after three months. The Central Excise Act and the rules made thereunder do not permit the Assistant/Deputy Commissioner to do so. Thus, if the registration certificate is dated 03-07-2014 then in any case, the exports carried out on or after 03-

07-2014 are required to be considered as valid and legal and accordingly, the rebate claims pertaining to the exports carried out on or after 03-07-2014, were required to be sanctioned. It is thus submitted that the appellate authority has failed in considering the said legal aspect and thereby the impugned order is not legal and justified and hence requires to be set aside.

4.3 As regard submission of copies of ARE-1 delayed by few days:

So far as late submission of triplicate, quadruplicate and quintuplicate copies of some ARE-1s to the Range office, the applicant submit that this has happened during the initial period as no concerned person was available to look after the routine Excise work. For this reason, the applicant could not submit the export documents such as Triplicate, Quadruplicate, Quintuplicate copies of ARE1, in original, in relation to various exports carried out during the said period. This reason ought to have been considered as procedural lapse and for such reason rebate claims could not have been rejected. It is settled legal position that the rebate claims cannot be rejected for such a small procedural and technical lapse particularly when the export of the finished goods and the payment of duty are not in dispute. These are the basic requirements for sanctioning the rebate claims and such requirements have been fulfilled by the applicant company and hence in such a case, the rebate claims were required to be sanctioned by the department. In view thereof, it is submitted that the impugned order is not legal and correct and thereby requires to be set aside.

4.4 It is further submitted that some of the finished goods which were exported, were duty paid goods. As stated earlier, M/s. BCSL, on closure of their factory, had transferred some stock of the finished goods to the applicant company on payment of duty and such goods thereafter were exported on payment of duty. In other words, the applicant had exported the duty paid finished goods on payment of duty and thereby duty has been paid twice on the same goods. In view thereof, it is submitted that the duty which has been paid second time may be treated as deposit and requested

to refund the same. As per settled legal position, the Government cannot retain such duty and such amount has to be refunded immediately.

4.5 It is also further submitted that the contention as mentioned in Para 6.3 of the impugned order, is not sustainable as even after the registration certificate has not been granted the number 1.e. AAACB2419HEM030 which has been generated through ACES could be mentioned as reference number on the ARE-1. It is also further submitted that the applicant time and again approached the concerned office to obtain the registration certificate but in vain and the certificate was not granted. It is further submitted that it was not required for the applicant to approach the concerned office time and again to obtain the registration certificate, but it was the obligation on the part of the concerned officer for issuance of registration certificate within 7 days and if any query or discrepancies is found, it should have been communicated to the applicant. But in the instant case, neither the registration certificate was issued within 7 days, nor query or discrepancies was communicated, but rejected the application after 40 days without passing any speaking order. It is thus submitted that it was not the fault of the applicant, but it was the fault of the department for not taking action within reasonable period. If the application was required to be rejected on some legal ground, the concerned authority could have rejected the registration within reasonable period (7 days) giving valid reasons. It is thus submitted that the contention of appellate authority is not correct and legal.

4.6 Further, the appellate authority has also relied upon the judgment in case of Vee Access Pharmaceuticals Vs. UOI, 2014 (305) ELT 100 (All). In this context, it is submitted that the said judgment is not applicable to the facts of the present case, because in the instant case, the applicant had submitted the copies of ARE-1s, but delayed by few days. It is therefore submitted that the appellate authority has erred in relying on the said judgment. Further, the appellate authority has relied on this judgment considering that the applicant has not at all submitted the copies of ARE-1.

4.7 In view of the facts stated above and the ratios of the judgements, referred to above, the applicant strongly contend that the order, under appeal, for rejection of rebate claims, is certainly untenable, not proper and not based on legal grounds. It is also contended that the appellate authority did not consider the applicant's submission in its proper perspective and also failed to appreciate the facts of the case. There was no valid and reasonable ground to dispute the facts and then to reject the rebate claims. The impugned OIA is therefore not only improper, unjustified but also not based on any legal grounds. As a matter of fact, it is devoid of any proper reasoning and justification and therefore only deserves to be set aside.

5. A personal hearing in the case was held on 20.10.2022. Mr. Vinay Kansara, Advocate, appeared on behalf of the applicant and submitted an additional written submission. He submitted that they waited for seven days for issue of registration. He further submitted the after seven days they started exporting on payment of duty in cash. They were communicated cancellation of their application after 40 days without following principles of natural justice and without giving any ground. He further submitted that late submission of ARE-1's can not take away their substantial right of rebate.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the issue to be decided is whether applicant is eligible for rebate on goods exported during the period when their Central Excise Registration was not granted to them and whether late submission of triplicate, quadruplicate and quintuplicate copy of the ARE-1 can take away their substantial right of rebate.

8. Rebate on goods exported during the period when their Central Excise Registration was not granted to them -

8.1 It is on record that the applicant had applied for Central Excise Registration through ACES on 20.05.2014. The applicant waited for 7 days and as the exports were as per time bound schedule, started to export the finished goods, depositing the excise duty through challans / in cash and not from the Cenvat Account. Due to the delay, the applicant had mentioned Central Excise Registration No. AAABC2419HEM030 in ARE-1s, which was the number generated through the ACES, on application basis. This application was rejected on 30.06.2014 without giving any reason for rejection. The applicant made fresh application on 30.06.2014 and therefore there is no fault from them. Registration No. AAABC2419HEM031 was granted to them on 17.07.2014 and the same was made effective from 17.07.2014.

8.2 In terms of the Notification No. 35/2001 CE (NT) dated 26-06-2001 as amended, it is stipulated that Registration Certificate in the Form specified in Annexure-II containing registration number shall be granted within seven days of the receipt of the duly complete application. The applicant waited for 7 days then started to export the finished goods, depositing the excise duty through challans/in cash after 7 days of submission of application. For this reason, the applicant had mentioned the number generated through the ACES. In the circumstances, the exports carried out were valid exports and hence it cannot be contended that the applicant was not authorized to export the goods. If the Central Excise Authorities fail in issuance of Registration Certificate, the applicant cannot be put to a disadvantage, when complete application was made with accompanying documents. Department accepted the Central Excise duty payments in cash through challans mentioning Registration No. AAACB2419HEM030 which had been generated through ACES on the ARE-1s, even though registration was not granted to

them, since there are no disputes regarding the export of goods or the payment of Central Excise duty, the applicant is eligible for rebate.

9. Late submission of triplicate, quadruplicate and quintuplicate copy of the ARE-1:

9.1 Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides that where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods. Government notes that in the instant case the impugned goods were cleared from the factory under self removal procedure and applicant had not submitted triplicate quadruplicate and quintuplicate copy of ARE-1s in original along with Invoice and packing list copies as required to be submitted to Range office within 24 hours as per Sr. No. (3)(a)(xi) of Notification No 19/2004-Central Excise (NT) dated 06-09-2004.

9.2 Government however observes that failure to comply with provision as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods

cleared from factory. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. If the correlation, as above is established, then export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9.3 Government observes that the Notification No.19/2004 CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, has laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "Sealing of Goods and examination at the place of dispatch and export" in para 3(a) under the heading "procedures" itself shows that these are procedural requirements. Such procedural infractions can be condoned. Further, it is now a settled law while sanctioning the rebate claim, that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. It is further observed that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue. In *Suksha International v. UOI* - 1989 (39) E.L.T.

503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the *Union of India v. A.V. Narasimhalu* - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the *Formica India v. Collector of Central Excise* - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in *Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner* - 1991 (55) E.L.T. 437 (S.C.).

10. Government accordingly, sets aside the impugned order-in-appeal No. CCESA-VAD(APP-II)/VK-330/2016-17 dated 24.10.2016 passed by the Commissioner(Appeals) and allows the revision application.

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 accorded to the applicant to present their case.

12. The Revision application is disposed off on the above terms.

Shrawan
6/4/23
(SHRAWAN KUMAR)

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

ORDER No. 226/2023-CX (WZ)/ASRA/Mumbai DATED 06.4.2023

To,

M/s Covestro India Pvt. Ltd.,
(Formerly known as Bayer Material Science Pvt. Ltd.),
Plot No. 3501-3515, 6301-6313 & 16
Mtr. Road / B2, GIDC Industrial Estate,
Ankleshwar, Dist-Bharuch 392002.

Copy to:

1. The Pr. Commissioner of GST & CX, Vadodara-II, GST Bhavan, Subhanpura, Vadodara-390 023.
2. Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara-II.
3. Mr. Vinay Kansara, Advocate D/F-31 & 32, Sardar Patel Complex, Near SBI Bank, GIDC, Ankleshwar.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.