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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No.195/08/WZ/2020 / 4892

Date of Issue: 03.08.2023

ORDER NO. 336 /2023-CX (WZ) /ASRA/Mumbai DATED 27 .07.2023 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 Can Pack India Pvt. Limited,  
Plot No.H-14/1, MIDC, Waluj,  
Aurangabad (M.S.)

Applicant : Commissioner of CGST & Central Excise, Aurangabad,  
N-5, Town Centre, CIDCO,  
Aurangabad - 431 003.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal no.  
NSK/EXCUS/000/APPL/132/18-19 dated 29.06.2018  
passed by the Commissioner (Appeals), CGST & Central  
Excise, Nashik.

**ORDER**

The subject Revision Application has been filed by the M/s Can Pack India Pvt. Limited, Aurangabad (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 29.06.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik, which decided an appeal filed by the applicant against a letter dated 30.10.2017 issued to them by the Assistant Commissioner, GST, Aurangabad Rural Division Department.

2. Brief facts of the case are that the applicant filed rebate claim for Rs.2,61,551/- on the goods exported by them. The original authority vide Order-in-Original dated 17.07.2017 found that FOB value of the goods was lesser than the invoice value and held that excess duty was paid by the applicant and that the rebate would be limited to the duty payable on the FOB value and hence sanctioned rebate amount of Rs.1,79,335/- in cash and the balance amount of Rs.82,216/- was allowed as re-credit in their Cenvat account. Thereafter, the applicant filed a refund application on 15.09.2017 requesting the original authority to sanction the balance amount of Rs.82,216/- in cash in terms of Section 142 of the CGST Act, 2017, as with effect from 01.07.2017, the Cenvat Credit Rules, 2004 had ceased to exist and they were unable to take re-credit of the said amount in their Cenvat account. In reply, the original authority vide letter dated 30.10.2017 informed the applicant that in the event of any grievance against the Order-in-Original dated 17.07.2017 they were required to file appeal with the Commissioner (Appeals) against the said Order-in-Original.

3. Aggrieved by the said letter dated 30.10.2017, the applicant filed an appeal against the same before the Commissioner (Appeals). The

Commissioner (Appeals) vide the impugned Order-in-Appeal rejected the said appeal on two grounds –

- The letter dated 30.10.2017 of the original authority against which the appeal was filed, was not a decision or order under the Central Excise Act, 1944 and that it was just a letter advising the applicant to approach the proper authority in case of any grievance against the Order-in-Original dated 17.07.2018; and

- Even if the said appeal filed on 08.12.2017 was considered as an appeal against the Order-in-Original dated 17.07.2018, the same was time barred as the same was filed even beyond the condonable period of 30 days.

4. The applicant filed an appeal before the Hon'ble Tribunal against the impugned Order-in-Appeal. However, the Tribunal vide Order dated 24.01.2020 held that since the subject matter related to sanction of rebate claim and an Order was passed by Commissioner (Appeals), it had no jurisdiction to decide the appeal and proceeded to dismiss the same as non-maintainable. However, the Tribunal gave the applicant the liberty to file the necessary application before the appropriate forum. The applicant, thereafter, filed the subject Application on 05.03.2020 against the impugned Order-in-Appeal on the following grounds: -

- (a) That the Commissioner (Appeals) had not taken cognizance of the submissions made by them;
- (b) That the Commissioner (Appeals) had not considered the fact that the Order-in-Original was passed on 17.07.2017 and that they had spent almost a month seeking clarifications as to how to avail the re-credit

and it was thereafter that they submitted the letter for cash refund which was replied to by the Department;

- (c) That refund of applications need to be filed with the jurisdictional Assistant Commissioner and in this case too, as they could not take re-credit of the excess amount in their Cenvat credit account, they had made an application before the Assistant Commissioner; and placed reliance on several decisions in support of their case.

In view of the above, they prayed that the impugned Order-in-Appeal be set aside and the relief claimed by them be allowed.

5. Personal hearing in the matter was granted to the applicant and Shri Nissar Shaikh, Deputy Manager of the applicant firm appeared on 09.05.2023 on behalf of the applicant. He reiterated their earlier submissions and further submitted that the amount allowed to be credited in their Cenvat account was required to be given in cash in view of Section 142(3) of the CGST Act, 2017. He requested to allow the application.

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

7. Government notes that in this case the dispute has arisen due to the fact that the applicant could not take re-credit of the excess amount of duty paid by them in their Cenvat credit account, as allowed by the Order-in-Original dated 17.07.2017, due to the advent of the GST regime from 01.07.2017. Government finds that the applicant vide letter dated 15.09.2017 requested the jurisdictional Deputy Commissioner to refund the said excess amount in cash in terms of the CGST Act, 2017. Government finds that it is at this juncture the Assistant Commissioner erred inasmuch

as, instead of giving a proper reply indicating whether the request of applicant can be adhered to or otherwise, he interpreted the request as an appeal against the Order-in-Original and directed the applicant vide letter dated 30.10.2017 to file an appeal with the Commissioner (Appeals). Government finds that the Commissioner (Appeals) vide the impugned Order-in-Appeal also failed to seize the proper context of the issue and rejected the appeal on the grounds that the letter dated 30.10.2017 of the original authority was not an order or decision. Government finds that in this case it is not in dispute that the Order-in-Original dated 17.07.2017 allowed the applicant to take re-credit of the excess amount paid by them in their Cenvat account. Government notes that if this decision of the original authority was not acceptable to the applicant they would have been required to file an appeal against the same before the Commissioner (Appeals). Clearly, the applicant is not aggrieved by this decision of the original authority. The only issue which then arose was with the GST regime coming into force from 01.07.2017, there existed no mechanism vide which they could manually take re-credit of the said amount in their Cenvat credit account as allowed by the Order-in-Original. Given the circumstances, Government finds that the applicant took the only recourse they had by approaching the jurisdictional Assistant Commissioner with a request to resolve the issue and refund the excess amount in cash in terms of the CGST Act, 2017.

8. Government finds that the original authority should have passed a proper speaking order on the request made by the applicant vide their letter dated 15.09.2017 for refund of the excess amount allowed as re-credit to them vide Order-in-Original dated 17.07.2017. Government finds that the original authority erred in not doing so and has deprived the applicant from seeking proper legal recourse to the issue on hand.

9. In view of the above, Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority to pass a proper speaking order on the request for refund made by the applicant vide their application dated 15.09.2017.

10. The Revision Application is disposed of in the above terms.

*Shrawan*  
27/7/23  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. ~~33~~ /2023-CX (WZ) /ASRA/Mumbai dated 27.07.2023

To,

M/s Can Pack India Pvt. Limited,  
Plot No.H-14/1, MIDC, Waluj,  
Aurangabad (M.S.).

Copy to:

1. Commissioner of CGST & Central Excise, Aurangabad, N-5, Town Centre, CIDCO, Aurangabad - 431 003.
2. Commissioner of CGST & Central Excise, (Appeals) Nashik, Plot No. 155, Sector 34, CIDCO, Nashik - 422 008.
3. Sr. P.S. to AS (RA), Mumbai.

*4-Grand file*