

REGISTERED
SPEED POST



F.No.195/278-284/2015-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE
NEW DELHI-110 066

Date of Issue: 6/7/18

Order No. 425-43/18-Cx dated 05-7-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No.HPU/EXCUS/000/APPEALS-I/34-40/2015-16 dated 30.4.2015 passed by the Commissioner of Central Excise (Appeals) Meerut

Applicant : M/s Ansar Chemicals, Sambhal, U.P.

Respondent : Commissioner of Central Goods & Service Tax, Meerut

ORDER

Seven Revision Applications No.195/278-284/2015-RA dated 30.4.15 are filed by M/s Ansar Chemicals, Sambhal, U.P. (hereinafter referred to as the applicant) against the Order-in-Appeal No.HPU/EXCUS/000/APPEALS-I/34-40/2015-16 dated 30.4.2015, passed by the Commissioner of Central Excise (Appeals), Meerut, whereby the applicant's appeal against the Orders of the Assistant Commissioner have been rejected.

2. The brief facts of the case are that the applicant had filed rebate claims against duty paid on exported Menthol products, but the same were rejected by the jurisdictional Assistant Commissioner on the ground that as per investigation conducted by the department the applicant had availed CENVAT Credit on the basis of bogus invoices issued by Jammu & Kashmir based manufacturers and had utilized the said wrong credit for payment of duty on the exported goods. However, on the appeal of the applicant, the Commissioner (Appeals), vide his OIA dated 27.11.2009, allowing the appeal held that the rebate of duty could not be denied merely for the reason that the departmental investigations was going on. The Meerut Commissionerate filed a revision application before the Government of India against the above stated Commissioner (Appeals)'s Order which was allowed and the matter was remanded back vide Order dated 12.9.11 for taking a fresh decision. Accordingly, the Commissioner (Appeals) decided the issue afresh and this time, rejecting the appeal of the applicant, upheld the Order of the Assistant Commissioner vide Order dated 21.11.11. The applicant filed revision application for the second time in this matter before the Government and the matter was remanded back for the second time vide Order dated 28.11.14 for taking a fresh decision because of some factual infirmities found in the Order of the Commissioner (Appeals). Accordingly, the Commissioner (Appeals) reconsidered the issue in compliance of the Government of India's Order dated 28.11.14 and passed OIA dated 30.4.15 rejecting the appeal of the applicant and upholding the Order of the Assistant Commissioner whereby the rebate of duty to the applicant was disallowed.

The applicant has filed the present revision applications against this third OIA dated 30.4.15.

3. The revision applications have been filed mainly for the reason that the main issue whether they had availed CENVAT Credit legally or fraudulently during the period April 2006 to March 2009 is covered under a show cause notice dated 15.1.10 which is still pending at the level of the Principal Commissioner, Central Excise, Chandigarh-II, and, therefore, rejection of their rebate claims just on the basis of a pending show cause notice is pre-mature.

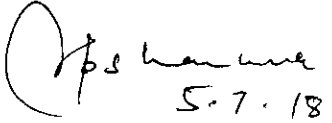
4. A personal hearing was earlier fixed on 16.5.18 which was not attended by the applicant as well as the respondent. On the request of the applicant next date of hearing was fixed on 7.6.18 and it was availed by Shri R.M.Saxena, Advocate, for the applicant who mainly emphasized that the OIO and the OIA rejecting their rebate claims before deciding the issue of wrong availment of CENVAT Credit by the applicant are pre-mature and the lower authorities should be directed to keep this matter in abeyance until the show cause notice dated 15.1.10 relating to erroneous availment of CENVAT Credit is decided by the adjudicating authority. However, no one appeared for the respondent and no request for any other date of hearing was also made from which it is implicit that they are not interested in availing the personal hearing in this matter. Further, it is also noticed that the respondent has not filed any cross objections or a reply against any of the above 7 revision applications filed by the applicant.

5. The Government has examined the matter and it is observed that there is no dispute regarding the fact that the rebate claims of the applicant have been rejected solely on the ground that the applicant had paid duty on the exported goods from the fraudulently availed CENVAT Credit and thus the exported goods could not be considered as the duty paid. Two show cause notices dated 12.9.07 and 15.1.10 to disallow CENVAT Credit of Rs.4582066/- and Rs.21744124/- respectively were issued to the applicant. Whereas the show cause notice dated 12.9.07 for the period November 2005 to December 2005 has been adjudicated by the Additional Commissioner vide his

Order dated 31.3.11 confirming fraudulent avilment of CENVAT Credit by the applicant, the second show cause notice dated 15.1.10 for the period April 2006 to March 2009 is still pending at the end of Principal Commissioner of Central Excise, Chandigarh. The Commissioner (Appeals), vide her Order dated 30.4.15, has upheld the rejection of rebate claims of the applicant mainly for the reason that wrong avilment of CENVAT Credit by the applicant is already confirmed by the Additional Commissioner vide his above Order dated 31.3.11. However, the applicant has challenged the OIA mainly on the ground that their rebate claims pertain to the period February 2008 to May 2008 for which the issue of CENVAT Credit is covered in the show cause notice dated 15.1.10 which is still pending and Order of the Additional Commissioner in regard to show cause notice dated 12.9.07 covering the period November 2005 to December 2005 cannot be made a basis for rejection of their rebate claims for the subsequent period. This point was raised before the Commissioner (Appeals) also, but is rejected by observing in the Order that the applicant did not produce any cogent documentary evidence to substantiate their claim that the CENVAT Credit availed during the period covered in the Order-in-Original of the Additional Commissioner was not utilized for payment of duty on the exported goods involved in their appeals before her. Now, in the revision application the details of avilment of CENVAT Credit, utilization thereof and the closing balance of the CENVAT Credit for the period December 2007 to May 2008 have been given and it is explained that the CENVAT Credit utilized by the applicant for the payment of exported goods during February 2008 to May 2008 did not entirely pertain to the period November 2005 and December 2005 for which the CENVAT Credit has been denied by the Additional Commissioner and some portion of the CENVAT Credit utilized by them apparently related to the period February 2006 to May 2006 for which the show cause notice is still pending at the end of the Principal Commissioner, Chandigarh. The above stated details of the CENVAT Credit given in the revision applications have not been rebutted by the respondent in any manner by way of filing a reply or otherwise and, therefore, the Government does not have any option but to take these details as correct. Hence,

the Government agrees with the applicant that rejection of their rebate claims merely on the basis of the Additional Commissioner's Order covering the CENVAT Credit availed upto the period December 2005 is not correct and the prior adjudication of the issue of wrong availment of CENVAT Credit covered in the show cause notice pending at the level of the Principal Commissioner is sin-qua non for taking a just and fair decision regarding maintainability of the rebate claims. Therefore, the Government considers it unavoidable to remand the matter back to the original adjudicating authority for third time with a direction to decide the rebate claims of the applicant relating to the period February 2006 to May 2006 only after issue regarding availment of the CENVAT Credit by the applicant covered in the show cause notice pending at the level of the Principal Commissioner, Chandigarh is decided as justice not only to be done but seems to have been done.

5. Accordingly, the Commissioner (Appeals)'s above referred Orders are set aside and the revision applications are allowed in terms of above discussions.


5.7.18

(R.P.Sharma)

Additional Secretary to the Government of India

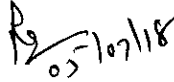
M/s Ansar Chemicals
Lodhi Sarai
Distt. Sambhal, U.P.

Order No. 425-43/2018-Cx dated 05-07-2018

Copy to:

1. Commissioner of Central Goods & Service Tax, Opp. CCE University, Mangal Pandey Nagar, Meerut-250004
2. Commissioner of Central Excise (Appeals-I), Meerut
3. The Assistant Commissioner, Central Excise Division, Moradabad, U.P.
4. PA to AS (RA)
- ✓ 5. Guard File.
6. Spare Copy

ATTESTED


(Ravi Prakash)
OSD (RA)