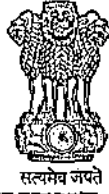


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/145/15-RA/1919

Date of Issue: 19.05.2022

ORDER NO. 594/2022-CX (WZ) /ASRA/Mumbai DATED 18.05.2022 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 Total Oil India Pvt. Limited,
Plot No.26, TTC Industrial Area,
Mahape MIDC, Post Kopar Khairne,
Navi Mumbai – 400 709.

Respondent : Commissioner of CGST & Central Excise,
Belapur Commissionerate.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PKS/168/BEL/2010 dated 13.07.2010 passed by Commissioner of Central Excise (Appeals), Mumbai – III.

ORDER

The subject Revision Application has been filed by M/s Total Oil India Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 13.07.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai - III which decided an appeal against the Order-in-Original dated 06.01.2009 passed by the Assistant Commissioner, Central Excise, Division Belapur - III, Belapur Commissionerate.

2. Brief facts of the case are that the applicant, amongst other items, also lost raw material and packing material in the floods that occurred on 26.07.2005. The applicant claimed insurance on the loss suffered by them due to the floods and they were sanctioned an amount of Rs.1,39,69,851/- which included an amount of Rs.20,27,476/- (net of salvage, VAT and Cenvat) towards loss of raw material and packing material. It was alleged that the applicant had availed Cenvat credit on the raw/packing material so lost; and since the same could not be used in the manufacture of final dutiable products, it was felt that the Cenvat availed on the same was recoverable from them. Show Cause Notice dated 31.07.2008 was issued to the applicant seeking to recover Rs.3,30,884/-, for the above reason. The applicant in the meanwhile reversed Rs.2,07,102/- along with interest of Rs.58,197/- which according to them was the amount of Cenvat credit availed on the raw/packing material which was destroyed in the floods. The original Adjudicating Authority decided the case vide Order-in-Original dated 06.01.2009 wherein he confirmed the demand raised, appropriated the amounts paid by the applicant and directed them to pay the differential amount of Rs.1,32,782/- along with appropriate interest.

3. The applicant preferred an appeal against the above Order-in-Original which was decided by the impugned Order-in-Appeal. The Commissioner (Appeals), upheld the Order-in-Original and dismissed the appeal filed by

the applicant. Aggrieved, the applicant filed an appeal before CESTAT, however, the Hon'ble Tribunal vide its Order No. A/1034/15/SMB dated 17.04.2015 dismissed the same as non-maintainable before it and granted liberty to the applicant to file Revision Application under Section 35EE of the Central Excise Act, 1944.

4(A). Consequently, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

- (a) The delay caused due to filing appeal before the Tribunal should be not be taken into account for computing the appeal period and such delay be condoned; they also sought condonation of the delay of six days in filing appeal before the Tribunal;
- (b) The amount of Rs.20,27,476/- claimed by them from the insurance company towards inputs/packing material included material valued at Rs.24,090/-, involving Cenvat credit of Rs.3,932/-, which was consumed in finished goods and hence Cenvat credit on the same should be allowed and relied on several decisions of the High Court and the Tribunal in support of their submission;
- (c) The demand was time barred as the same was raised in the year 2008 for demands pertaining to the year 2005-06 & 2006-07 as there was no suppression of facts from their end; that it was their bonafide belief that they had reversed the proper amount of Cenvat credit and had also intimated the department about the disruption of production due to floods vide letter dated 10.08.2005 and relied on several judgments in support of their claim;
- (d) That the reliance placed on their receipt of the insurance claim cannot be a relevant factor to invoke the extended period as they had only received the value of goods destroyed and not the excise duty involved on the same;
- (e) That penalty cannot be levied under Rule 15(3) of the Cenvat Credit Rules, 2004 as the same pertained to Cenvat credit on 'input

services' whereas the present case involved Cenvat credit on 'inputs'.

4(B) The applicant vide their letter dated 20.12.2021 made additional submissions as under:-

- (a) The Department vide the letter dated 02.01.2008 and the Show Cause Notice had merely provided the list of inputs and the insurance amount received by them, but had failed to indicate whether they had availed Cenvat credit on the same and the amount so availed; whereas they had provided the said details in reply to the Show Cause Notice and reversed the amount of Rs.2,07,101.54 along with interest of Rs.58,197/- with respect to the inputs on which they had availed Cenvat credit; and hence they had reversed the appropriate amount of Cenvat credit; that the Commissioner (Appeals) had not taken cognizance of this fact;
- (b) They further reiterated that the period of filing appeal before CESTAT needs to be excluded for arriving at the date for filing the instant application; the extended period was not invocable and penalty not imposable in this case:

In light of the above, the applicant prayed that the demand raised on them should be dropped.

5. Personal hearing in the matter was granted to the applicant on 21.12.2021 and Shri Manoj Chauhan, Customs Act, 1962 and Shri Tejash Lad, Manager appeared online for the same. They reiterated their earlier submissions and made a further written submissions dated 20.12.2021, details of which have been mentioned above. They submitted that the quantification of Cenvat amount to be reversed based on the insurance amount of goods destroyed was not correct as some goods were non-cenvatable. They requested to consider the facts on record.

6. Government has carefully gone through the relevant case records available in case file, the oral and written submissions and also perused the impugned Order-in-Original and the Order-in-Appeal dated 13.07.2010.

7. Government notes the applicant had filed an appeal against the impugned Order-in-Appeal before the Hon'ble Tribunal who had dismissed the same as non-maintainable and allowed them to prefer an appeal before the Revisionary Authority, which they have done within the stipulated time limit.

8. Government notes that in the present case, the applicant had lost certain inputs in the flood on 26.07.2005, for which they claimed insurance and received a part of the amount claimed; and that they subsequently reversed the Cenvat credit on such inputs on which they had availed Cenvat credit along with interest. Government observes that, thereafter, a Show Cause Notice was raised on the applicant which pre-supposes that the entire quantum of inputs for which they claimed insurance were cenvatable inputs; and hence the reversal made by them was on the lower side and proceeded to demand the differential Cenvat credit. Government finds that the applicant had submitted a list of inputs and the Cenvat involved therein, which they had reversed, in their reply to the Show Cause Notice, which has not been challenged by the Department. Government notes that the applicant has submitted that some of the inputs lost were non-cenvatable. Government finds that the list of inputs and the corresponding Cenvat credit involved was not brought out in the Show Cause Notice, and, the demand was raised on the assumption that all the inputs for which the applicant claimed insurance were cenvatable. Government finds that the Commissioner (Appeal) has erred in holding that the applicant should have reversed the Cenvat credit calculated on the entire amount of insurance claimed by them, as, the onus of proving that the applicant had availed Cenvat credit which has been demanded by the Show Cause Notice was on the Department. In view of the above, Government finds that the demand raised by the Show Cause Notice will not hold good as no evidence has been

adduced to prove that the applicant had actually availed of the Cenvat credit on the inputs for which the demand has been raised. Therefore, the subject impugned Order-in-Appeal, which upheld the Order-in-Original confirming the demand and imposing penalty, deserves to be annulled and Government accordingly holds so.

9. The subject Revision Application is allowed.


(SHRAWAN KUMAR)

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

ORDER No. 394/2022-CX (WZ) / ASRA/Mumbai dated 18.05.2022

To,

M/s Total Oil India Pvt. Limited,
Plot No.26, TTC Industrial Area,
Mahape MIDC, Post Kopar Khairne,
Navi Mumbai – 400 709.

Copy to:

1. The Commissioner of CGST & Central Excise, 1st floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.
2. The Commissioner of Central Excise (Appeals), Mumbai – III, 5th floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file
5. Notice Board.