

# TAX INFO

*Dated 23/11/2022*

Latest update on GST Law: **Refund of credit is eligible u/s 142(6)(a) of CGST Act in case of procedural aberration that occurred during transition to GST period** as given in judgement by CESTAT, Mumbai.

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<b>Name of Petitioner</b>	M/s Clariant Chemicals India Ltd.
<b>Name of Respondent</b>	Commissioner of Central Excise & Service Tax
<b>Authority</b>	CESTAT, Mumbai
<b>Date of Judgement</b>	18.10.2022
<b>Appeal No.</b>	Excise Appeal No. 87606 of 2019

## **Brief Facts of the Case Law:**

The order was passed by the Assistant Commissioner, CGST rejecting refund claim of Rs.11,04,057/- filed by the Appellant against CVD and SAD paid in respect of bill of entry dated 29.06.2017 in the pre-GST regime. The appellant is a manufacturer of excisable goods who procured certain inputs such as pigments, poly-ether alcohols etc. from Germany and filed bill of entry No. 2282496 on 29.06.2017 as well as cleared the goods upon payment of Customs duty including Countervailing Duty (CVD) and Special Additional Customs Duty (SAD) on dated 10.07.2017 vide challan. The goods were received by the Appellant at its factory premises on 19.07.2017 but the said payment of CVD and SAD could not be reflected in the ER-I Return as the due date was already over before the goods reached the factory. Appellant sought for refund of CENVAT Credit under Section 11B of the Central Excise Act, 1944 read with Section 142 of the GST Act in the post GST regime as it could not avail the credits accumulated against payment of CVD and SAD. The refund sanctioning authority rejected the refund vide Order-in-Original dated 06.09.2018 and Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to this forum.

## **Findings and Decision of the Court:**

It is an admitted fact that appellant had paid the CVD and SAD after the appointed date that is fixed for implementation of CGST Act. It is also not disputed by the appellant that upon receipt of goods at his factory premises on 19.07.2017, there was window open for a considerable period of time to record the un-availed CENVAT Credit through Tran-I form but it is the only mistake committed by the Appellant in not availing the same within the stipulated time frame. There is no denying of the fact that Appellant has been eligible to avail CENVAT Credit under the old tax regime but due to change in the application of law, it was put beyond any recourse to avail the credit for which Appellant had appropriately sought relief under Section 11B of the Central Excise Act read with Section 142(3) and 142(6) of the GST Act for refund of the amount so as to protect its vested right. Referring to Article 265 of the Constitution of India when the mandate of the Constitution is that no tax can be collected without authority of law, it is incumbent upon the Department to justify its retention with itself when there is a bonafide claim for repayment/re-credit to the assessee. The judicial forum on several occasions have taken liberal approach to bypass procedural lapses committed during the transitional stage, so as to provide the necessary relief to the assessee and recently on 22.07.2022, Hon'ble Supreme Court of India, in the case of Union of India And Others Vs. Filco Trade Centre Pvt. Ltd. had given specific direction to the Department to open common portal for filing required forms in order to avail transitional credit through Tran-I and Tran-II for two months and aggrieved registered assessee, who have no Writ Petitions pending before the High Courts also were allowed to avail transitional credit by filling up the concern forms in Tran-I and Tran-II. Thus, only because of procedural aberration occurred during transition to GST period, Appellant could not take the credits in its electronic ledger in the GST regime, for which it sought for refund such a contingency is perhaps foreseen by the legislature for which contingent provision is well enumerated in Clause 6(a) of Section 142 of the CGST Act that deals with claim for CENVAT Credit after the appointed date under the existing law. Therefore, in view of clear provision contain under Section 142(6)(a) of the CGST Act, Appellant is eligible to get the refund of credit by cash except where unjust enrichment is alleged or established against the Appellant. The Appellant is also otherwise eligible to go for availment of transitional credit through filing required forms in Tran-I as per the order passed by the Hon'ble Supreme Court on 22<sup>nd</sup> July, 2022 but in view of the observation of this Tribunal read with Section 142(6)(a) of the CGST Act that such CENVAT Credit amount shall be paid to the Appellant in cash, it can't avail dual benefits once order of this Tribunal is duly complied by the Department by the closing date of the window.

Thus, the Order-in-Appeal No. MKK/466/RGD APP/2018-19 dated 07.02.2019 was set aside and the Appellant is eligible to get refund of Rs.11,04,057/- paid against CVD and SAD which applicable interest, if any, within a period of two months of communication of this order.

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