

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Excise Appeal No. 75305 of 2022**

(Arising out of Order-in-Appeal No. 13/KOL-South/2022 dated 01.03.2022 passed by Commissioner of CGST & Central Excise (Appeal-I), Kolkata)

**M/s Wacker Metroark Chemical private Limited,**  
(D. H. Road, Chandī, South 24 Parganas, West Bengal-743503)

**...Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Kolkata South,**  
(GST Bhawan, 180 Shantipally, Rajdanga Main Road, Kolkata-700107)

**...Respondent**

..

**APPEARANCE :**

Shri Nand Kishore Kothari, Chartered Accountant for the Appellant  
Shri A. Mukherjee, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)**

**FINAL ORDER No...75863./2026**

DATE OF HEARING : 08.07.2026

DATE OF DECISION : 08.07.2026

**PER R. Muralidhar :**

The appellant had exported 38 consignments on payment of Excise Duty. They have claimed the Rebate for such exports. After verifying the documents presented by the appellant, the Adjudicating authority has granted cash refund of Rs.2,10,62,834/- and the balance Rs.5,15,840/- has been allowed by way of Cenvat Credit, under different Orders-in-Original. The appellants filed a letter with the jurisdictional Asst Commissioner seeking the balance amount of Rs.5,15,840/- as cash refund in terms of Section 142 of the CGST Act 2017. The same was refused by him vide his letter dated 01.05.2019. Being aggrieved, the appellants filed their appeal before the Commissioner (Appeals) against this letter, who has dismissed the appeal. Therefore, the appellants are before the Tribunal.

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2. The Ld Chartered Accountant, appearing on behalf of the appellant, submits that when the Rebates were granted by way of various Orders in Original in August 2017, the Cenvat provisions were no more in force as the new regime of GST had already come into place with effect from 1.7.2017. Therefore, the Adjudicating authority was required to grant the rebate only by way of cash since the appellant could not have availed the Cenvat Credit. He cites various case laws wherein the Tribunals and High Courts have held that the exporter would be eligible for cash refund in case of such Rebate claims. Accordingly, it is prayed that the appeal may be allowed.

3. The Ld. AR, appearing for the Revenue submits that in respect of the OIOs passed by the Adjudicating authority granting the part amount of Rebate in cash and part amount by way of Cenvat Credit, the appellants have not filed any Appeal before the Commissioner (Appeals). They have once again approached the same Adjudicating authority to grant the balance refund by way of cash. This procedure has been held as erroneous by the Commissioner (Appeals) while dismissing the appeal filed by the appellant.

4. Heard both the sides and perused the appeal records.

5. I have gone through the Orders in Original passed by the Adjudicating authority. The relevant portion of one OIO is reproduced below:

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GOVERNMENT OF INDIA  
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX, CGST & CX,  
BISHNUPUR DIVISION, KOLKATA SOUTH COMMISSIONERATE,  
180 RAJDANGA MAIN ROAD, SHANTIPALLY, KOLKATA-700107

Order No: 80 R/AC/CGST & CX/BPD/2017-18

Dated: /08/2017

PASSED BY THE ASSISTANT COMMISSIONER OF CENTRAL TAX, CGST & CX  
BISHNUPUR DIVISION: 180 RAJDANGA MAIN ROAD, SHANTIPALLY, KOLKATA-  
700107

1. This copy is granted free of charge for the private use of any person to whom it is used.

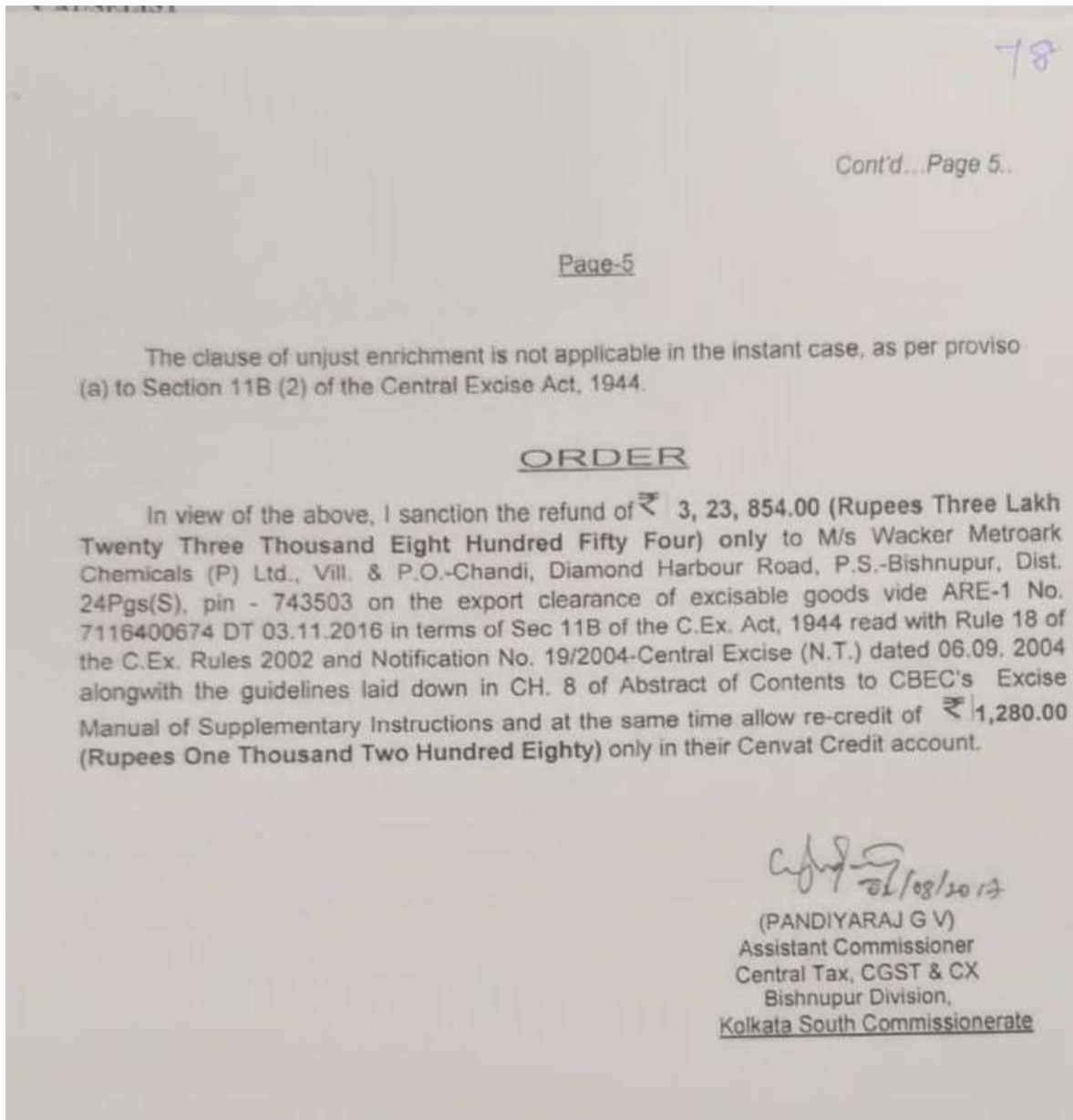
Any person deemed himself aggrieved by this order may appeal against this order to the commissioner (Appeal), Central Excise, Appeal-I, 180, Shantipally, Rajdanga Main Road, Kolkata within 60 (Sixty) days from the date of personal service or the date of receipt by post by the party. It should bear of Court Fees Stamps of Rs. 1 only. It must be accompanied by:-

- i) Copy of appeal;
- ii) This copy of order or another copy of the order must bear court fees Stamps below:-
  - (a).If the amount of value or the subject matter is fifty or less than Rupees Fifty - Rs. 0.40
  - (b).If such amount or value exceeds Fifty Rupees- Rs. 0.75,

2. If a copy or any other documents or the records of the department or any Vakalatnama is filed with appeal, it must bear Court Fees Stamps as below:

- a.Copy of document on the records of the Department—Rs.0.60:
- b.Vakalatnama:
- c.Where presented to Appellate Commissioner or his subordinate - Rs. 2/- only.

Cont'd on page 2.

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6. This is an appealable Order in Original. If the assessee is not satisfied with any portion of this order, the proper course of action is to file an appeal before the Commissioner (Appeals). For filing such appeal, the appellant would get 60 plus 30 totally 90 days to file the appeal. In this case, since the OIO has been issued on 31.08.2017, the appellant had time till 30.11.2017 to file the appeal. But admittedly, the appellants have not filed any appeal before the Commissioner (Appeals).

7. It is also observed the appellant has filed a letter on 14.01.2019 before the jurisdictional Asst Commissioner, which is reproduced below:

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**WACKER**

BISHNUDAS PAHARI  
ASSISTANT MANAGER - TAXATION

Wacker Metroark Chemicals Pvt. Ltd.  
D. H. Road, Chandl, 24 Parganas (S), West Bengal - 743503, India  
Tel. +91 33 24072-228  
Fax +91 33 24072-291  
bishnudas.pahari@wacker.com

Wacker Metroark Chemicals Pvt. Ltd.  
D. H. Road, Chandl, 24 Parganas (S), West Bengal - 743503, India  
CIN: U24119WB1998PTC087722

The Assistant Commissioner  
Central Tax, CGST & CX  
Bishnupur Division,  
Kolkata South Commissionerate  
180 Rajdanga Main Road,  
Shantipally, Kolkata-700107

Date: 14.01.2019

**Subject : Refund of amount ordered to be re-credited in CENVAT credit account on the export clearance of excisable goods post implementation of Goods and Service Tax (GST)**

1.0 This is with reference to the Order-in-Originals (hereinafter referred to as OIO's) listed below and issued by your good-self to M/s. Wacker Metroark Chemicals Private Limited having Central Excise Registration No. AAACW2192GXM001 and its factory at Diamond Harbour Road, P.O Chandl, P.S. Bishnupur, District 24 Parganas South, West Bengal - 743503 (hereinafter referred to as **WMC or Company or we or us**) for sanction of refund claim on account of export clearance of excisable goods in terms of Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. Copy of all the OIO's is attached herewith and marked as **Annexure 1**

**Statement of amount order to be re-credited to CENVAT Credit Account for export of excisable goods prior to 30.06.2017**

Sl. No	Order-in-Original No.	Date of Order	Refund		
			Applied	Sanctioned	Rejected & Order for re-credit
1	80R/AC/CGST & CX/BPD/17-18	02/08/2017	325,134	323,854	1,280
2	79R/AC/CGST & CX/BPD/17-18	02/08/2017	320,409	318,719	1,690
3	78R/AC/CGST & CX/BPD/17-18	02/08/2017	295,916	257,974	942
4	77R/AC/CGST & CX/BPD/17-18	02/08/2017	293,585	290,703	2,882

Please address your correspondence to  
23, K.P. Lane,  
Kolkata 700 026, India  
www.wacker.com

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WACKER METROARK CHEMICALS PRIVATE LIMITED  
 D. H. ROAD, CHANDL, P. S. BISHNUPUR,  
 24 PARGANAS (S), WEST BENGAL  
 GSTIN No. - 19AAACW2192G128


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8. From this letter, it is seen that the OIO reproduced above, has been received by the appellant on 2.8.2017. The letter to the Asst Commissioner has been submitted on 14.01.2019 that is after about 1 year 5 months.

9. By way of response letter dated 15.02.2019, the Asst Commissioner has clarified that the request to grant cash refund cannot be entertained by his office. It is also clarified that if the appellant was not satisfied with the Order in Original, they should have filed their appeal before the Commissioner (Appeals). This copy is extracted below:

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Ministry of Finance  
 Department of Revenue  
 कोलकाता दक्षिण के सहायक आयुक्त का कार्यालय, सीजीएसटी और सीएस, बिष्णुपुर मंडल,  
 OFFICE OF THE ASSISTANT COMMISSIONER OF CGST & CX  
 BISHNUPUR DIVISION, KOLKATA SOUTH COMMISSIONERATE  
 जी एस टी भवन (5 वीं मंजिल): 180, राजडांगा मेन रोड : शांतिपल्ली : कोलकाता-700107  
 GST BHAVAN (5<sup>TH</sup> FLOOR), 180, RAJDANGA MAIN ROAD, SHANTIPALLY, Kolkata-700107,  
 e-mail: bishnupurdv.gst@gov.in

C.NO.V(18)20/Refund/Wacker/BPD/Tech/KOS/18-19 5000 Dated: 15/02/2019

To  
 M/s. Wacker Metroark Chemicals Pvt. Ltd.  
 D.H Road, Chandl  
 24 Parganas (S)  
 Pin-743503

Sir,

Sub: Refund amount ordered to be re-credited in CENVAT credit account on the export Clearance of excisable goods post implementation of Goods and Service Tax (GST) – reg.

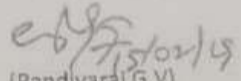
Kindly refer to your letter dated 14/01/2019 on the above subject.

On scrutiny of the documents, it is noticed that you have claimed refund of Rs.5,15,840/- ordered to be re-credited in Cenvat credit account based on the order passed by the Assistant Commissioner, CGST & CX, Bishnupur Division.

In this connection, your kind attention is brought to Section 35 of Central Excise Act, 1944, wherein it has been envisaged that any person aggrieved by this order may, under Section 35 of the Central Excise Act, 1944 file as appeal against this order to the commissioner (Appeals), Central Excise, Kolkata

In view of the above, it transpires that undersigned is not in a position to process your claim of refund. Your application along with documents is hereby returned to you for favour of necessary action at your end.

Encl: As above,

Yours Sincerely,  
  
 (Pandiyara) G.V.  
 Assistant Commissioner  
 CGST & CX, Bishnupur Division

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10. After subsequent correspondence, the office of the Asst Commissioner has sent their letter dated 01.05.2019, stating that the adjudicating authority becomes *functus officio*. Hence, the cash refund request cannot be entertained. This letter is reproduced below:

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कोलकाता दक्षिण के वास्तविक आयुक्त का कार्यालय, बीबीपुरडी और सीएम, बिशुपुर नगर.  
 OFFICE OF THE ASSISTANT COMMISSIONER OF CGST & CX  
 BISHNUPUR DIVISION, KOLKATA SOUTH COMMISSIONERATE  
 पी एस टी भवन (5 वीं मंजिल), 180, राजदंगा मेन रोड : शांतिपल्ली - कोलकाता-700107  
 GST BHAVAN (5<sup>TH</sup> FLOOR), 180, RAJDANGA MAIN ROAD, SHANTIPALLY, Kolkata-700107,  
 e-mail: bishnupurdiv.gst@gov.in

C.No.V(18)/Refund/Wacker/Tech/BPD/KOS/18-19 Date:01/05/2019

To:  
 The Wacker Metroark Chemicals Pvt.Ltd.  
 D.H Road, Chandl  
 24 Parganas (S)  
 Pin-713503

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Sub: Refund amount ordered to be re-credited in CENVAT credit account on the export clearance of excisable goods post implementation of Goods and Services Tax (GST) – reg.

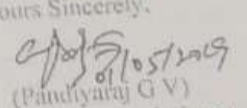
Please refer to your refund application resubmitted on 14.03.2019 and this office letter under even no.5000-01 dated 15.02.2019 on the above subject.

In this regard, it is informed that after issuing an adjudication order, the adjudication authority becomes *functus officio*, which means that his mandated comes to an end as he has accomplished the task of adjudicating the case. It may also be noted that under the Central Excise Act, adjudication authority does not have powers his own order and carry out corrections to the adjudication order. Please refer to Board's Circular No.1053/2/2017-Cx dated 10.03.2017.


Further, in your letter you have mentioned Section 142(8)(b) of CGST Act, 2017 to grant refund in cash for any assessment or adjudication proceeding initiated and finalized under the previous law. It is pertinent to mention that Section 142(8)(b) of CGST Act, 2017 is not applicable in this case as the impugned refund sanction orders were already adjudicated and same authority cannot re-adjudicate or modify the order.

This office had already returned your application on 15.02.2019 submitted by you on 14.01.2019, citing Section 35 of Central Excise Act, 1944, wherein it has been envisaged that any person aggrieved by this order may, file as appeal against the order to the Commissioner (Appeals), CGST & CX, Kolkata.

In view of the above, your refund application is once again returned to you along with documents.

Yours Sincerely,  
  
 (Pandiyaraj G V)  
 Assistant Commissioner  
 CGST & CX, Bishnupur Division  
 Kolkata-South Commissionerate.

Encl: As above.



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11. It is observed that the appellant has filed the appeal before the Commissioner (Appeal) against this letter dated 01.05.2019, which came to be dismissed by the Commissioner (Appeals) vide Order-in-Appeal No. 13/KOL-South/2022 dated 01.03.2022, holding as under:

*“9. From the above legal position, it is seen that an appeal is required to be filed within the stipulated time period of within sixty days from the date of the communication to him of such decision or order and if the appellant failed to file appeal within stipulated time period then they must be given sufficient cause for condonation of delay in filing the appeal. Here, I find that first of all the appellant submitted the appeal against a letter which is not appealable and secondly, the period for filing appeal against all thirty eight refund orders had already been over since long. Accordingly, as found supra the instant appeal is not acceptable for the reasons mentioned above.”*

12. The Ld Chartered Accountant vehemently argued that the letter dated 1.5.2019, being a 'Speaking Order', can still be taken as an appealable order. But it is seen that the Commissioner (Appeals) has not dismissed on the appeal on this ground alone. He has also held this no appeal was filed in respect of Rebate sanctioning OIOs, within the time limit.

13. After going through the above factual details, I find that the appellant was required to file his appeal before the Commissioner

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(Appeals) against the OIOs passed granting the Rebate partly by cash and partly by way of Cenvat. They have failed to do so. As correctly pointed by the Asst Commissioner, he becomes *functus officio* once the OIO is passed. He cannot sit on the same to modify or rectify it. Further it seen that even this request letter has been filed much later after about 1 year 5 months. Therefore, I take the view that the appellant had come to know that he had run out of time to file the appeal before the Commissioner (Appeals). Hence, he has taken recourse to this method of filing a letter before the Asst Commissioner, for which there is no provision whatsoever.

14. Non-filing of appeals against the Rebate sanctioning OIOs proves fatal to the appellant's case. They could not have overcome this error by filing some letter before the Assistant Commissioner on 14.01.2019, after about to 1 year 5 months from the date of OIO.

14. Considering the above details, I do not find any reason to interfere with the proper and correct decision arrived at by the Commissioner (Appeals).

15. I dismiss the appeal.

(Dictated and pronounced in the open court)

Sd/-  
**(R. Muralidhar)**  
**Member (Judicial)**

Tushar Kr.