

OPINION**1. Querist :**

M/s. Virgo Polymer India Ltd.,
A1A, MMDA Indl. Complex,
MM Nagar – 603 209.
Chengalpet District.

2. Facts :

Querist has obtained advance authorisation for import of various plastic materials for manufacture and export of flexible intermediate bulk containers. It is stated by the querist that in respect of such imports, without payment of duty under advance authorisation, in most of the cases they have completed the prescribed export obligation but in a few cases there was some excess imports / default in completion of export obligation. Under such circumstances, the querist has paid differential duties involved including CV duty / additional duty for regularisation of the imports. The querist has referred to the following three advance authorisations where differential duties have been paid.

Licence No. / Date	Duty (Rs.)	Interest (Rs.)	Total Duty Paid (Rs.)
0410127385 / 24.08.2011	548.00	851.00	1,500.00
0410131995 / 22.12.2011	28,105.00	40,993.00	69,200.00
0410149733 / 11.09.2013	2,36,425.00	2,66,826.00	5,03,260.00

3. Query :

With reference to the additional / CV duty paid the querist wants clarification on the following.

- (i) Is it possible to take GST credit for the CVD portion?
- (ii) Is there any possibility to send letter to GST for taking credit?

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4. Opinion :

- 4.1 The differential duty payment including CV duty / additional duty relates to pre-GST period. In the normal course the querist would have been eligible to take Cenvat credit of these duties in their Cenvat credit ledgers / accounts. However, now only GST provisions are applicable and therefore, as on date, there is no legal provision to avail these differential duties paid as CV duty, in the form of Cenvat credit under IGST / GST provisions. However, as the right to availment of credit by the querist is established and the only hitch is because of the absence of Cenvat Credit Rules, as on date the querist can claim refund of these differential duties in cash in terms of transitional provisions contained in CGST Act 2017. Section 142(6)(a) of CGST Act 2017 reads as follows:

“every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;”

- 4.2 In the light of the above transitional provisions where the assessee is not able to take Cenvat credit then he can claim refund of the eligible credit amount by way of cash from the jurisdictional GST authorities by filing an application along with supporting documents in terms of the above provisions. Accordingly the querist can approach the jurisdictional GST officials and file a claim for refund of the eligible amount in the form of cash.



S. MURUGAPPAN

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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.