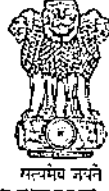


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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.198/204/WZ/2019 | 156

Date of Issue: 12.01.2023

ORDER NO. 05 /2023-CX (WZ) /ASRA/Mumbai DATED 10.01.2023
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 : Pr. Commissioner of GST & Central Excise, Surat
Commissionerate, GST & Central Excise Building, Opp.
Gandhi Baug, Chowk Bazar, Surat - 395001

Respondent : M/s Piramal Glass Limited,
ONGC Road, Tarsadi Village,
Kosamba, Dist. Surat - 394120.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-SRT (APPEALS) /PS-777/2018-19 dated
31.01.2019 passed by the Commissioner, CGST &
Central Excise, Appeals, Surat.

ORDER

The subject Revision Application has been filed by the Pr. Commissioner of GST & Central Excise, Surat (here-in-after referred to as 'the applicant/Department') against the Order-in-Appeal dated 31.01.2019 passed by the Commissioner, CGST & Central Excise, Appeals, Surat which decided an appeal filed by the applicant against the Order-in-Original dated 20.04.2018 passed by the original Adjudicating Authority, which in turn decided rebate claims filed by M/s Piramal Glass Limited, Surat, (here-in-after referred to as the 'respondent').

2. Brief facts of the case are that the respondent exported goods and claimed rebate of the duty paid on such exported goods. The original authority while deciding these rebate claims, vide Order-in-Original dated 20.04.2018, found that the value on which duty was paid was higher than the FOB value, however, such excess duty paid amounting to Rs.5,29,998/-, was also refunded to the respondent in cash in terms of the provisions of Section 142 of the CGST Act, 2017. The applicant Department was of the view that in terms of the said Section of the CGST Act, 2017, such duty paid in excess should not have been refunded to the respondent in cash and hence filed an appeal before the Commissioner (Appeals) against the Order of the original authority. The Commissioner (Appeals) vide the impugned Order-in-Appeal found the appeal to be time barred as the Order for reviewing the Order-in-Original given by the Commissioner was passed beyond the period of 90 days prescribed by Section 35(3) of the Central Excise Act, 1944. The Commissioner (Appeals) found that the Order-in-Original dated 20.04.2018 was communicated to the Commissioner on 04.05.2018 and the Order for review was passed on 20.09.2018, which was beyond the stipulated period of 90 days and hence rejected the appeal filed by the Department.

3. Aggrieved, the applicant Department has filed the subject Revision Application against the impugned Order-in-Appeal dated 31.01.2019 on the following grounds: -

(a) The Order of the Commissioner (Appeals) is not correct inasmuch as the impugned Order-in-Original dated 20.04.2018 had been received in the office of the Commissioner, GST & Central Excise, Surat on 18.06.2018, as

indicated by the letter F. No. X/02/2017 dated 14.06.2018 of the JAC, Division – III vide which the said Order-in-Original dated 20.04.2018 was forwarded. Thus, in terms of Section 35(3) of the Central Excise Act, 1944 the order for reviewing the Order-in-Original was passed within the stipulated period of 90 days as the Order-in-Original was received on 18.06.2018 and the review order was passed on 14.09.2018.

(b) That while filing the EA-2 application they had inadvertently mentioned the date of receipt of the Order-in-Original as 04.05.2018 instead of 18.06.2018 which had led the Commissioner (Appeals) to hold that the appeal was time barred;

(c) That the Commissioner (Appeals) had not gone into the merits of the case;

In view of the above, the applicant requested that the case be remanded back to the Commissioner (Appeals) for being decided on merits.

4. Personal hearing in the matter was granted to the applicant and the respondent. Shri Mehul Jivani, C.A., from M/s S.S. Gupta, Chartered Accountant, appeared online on 09.11.2022 on behalf of the respondent and submitted that Commissioner (Appeals) had rejected the appeal of the Department as time barred. He further submitted that the Order of the original authority was legal and correct. He requested to maintain the same.

5. Government has gone through the case records available, the written and oral submissions and also perused the impugned Order-in-Original and Order-in-Appeal.

6. Government notes that the Commissioner (Appeals) held the appeal filed by the Department to be time barred as the order for reviewing the Order-in-Original was passed by the Commissioner after 90 days from the receipt of the Order-in-Original in the office of the Commissioner. Government notes that the applicant Department has now submitted that the actual date of receipt of the Order-in-Original was 18.06.2018 as against 04.05.2018 erroneously mentioned by them in the EA-2 application. They have stated that the JAC letter dated 14.06.2018 which forwarded the impugned Order-in-Original is proof thereof. Government notes that if the

claim of the applicant Department is true, then their appeal before the Commissioner (Appeal) will not be hit by the limitation of time.

7. Given the above facts, Government sets aside the impugned Order-in-Appeal dated 31.01.2019 and remands the case back to the Commissioner (Appeals) to verify the claim of the applicant Department with respect to the date of receipt of the Order-in-Original in the office of the Commissioner and if the same is found to be true, to decide the case on merits. The applicant Department should be provided the necessary opportunity to submit all documents in support of their case.

8. The subject Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 05 /2023-CX (WZ) /ASRA/Mumbai dated 10.01.2023

To,

M/s Piramal Glass Private Limited,
ONGC Road, Tarsadi Village,
Kosamba, Dist. Surat - 394120.

Copy to:

1. Commissioner of CGST & Central Excise, Surat Commissionerate, New Central Excise Building, Chowk Bazar, Surat - 395001.
2. Commissioner, Central Excise & CGST Appeals, Surat, 3rd floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlanta Shopping Mall, Althan, Surat - 395 017.
3. M/s S.S. Gupta, Chartered Accountant, 1009-1015, Topiwala Centre, Topiwala theatre Compound, Near Railway Station, Goregaon (W),
4. Mumbai - 400 104.
5. Sr. P.S. to AS (RA), Mumbai.
6. Notice Board.