

REGISTERED

SPEED POST



F.NO. 195/844-I & II/10-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 13/2/13

ORDER NO. **117-118/2013-CX** DATED **13-02-2013** OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : REVISION APPLICATION FILED UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE ORDER-IN-APPEAL No. SDK (1503) 112/M-I/2001 dated 19.07.2001 passed by Commissioner of Central Excise (Appeals) Mumbai-I

APPLICANT : Shri Shyam Kumar C. Prem Chandani
Partner of M/s Sunny Overseas, Ahmedabad

RESPONDENT : The Commissioner of Central Excise & Customs, Mumbai-I

ORDER

These two revision applications are filed by Shri Shyam Kumar C. Prem Chandani partner of M/s Sunny Overseas, Ahmedabad and M/s Sunny Overseas Ahmedabad against the order-in-appeal No. SDK (1503) 112/M-I/2001 dated 19.07.2001 passed by Commissioner of Central Excise (Appeals) Mumbai-I.

2. Brief facts of the case are that on the basis of intelligence that Merchant Exporters of textiles fabrics had fraudulently claimed and obtained the rebate of Central Excise duty on the strength of fake / fabricated documents and misdeclaration, suppression of facts, the sanctioned rebate claims of the appellant were taken up for scrutiny. During the course of scrutiny of the duty paying documents, GPIs, with the corresponding shipping bills in respect of each of the refund claims, discrepancies in descriptions were noticed in that while the duty paying documents indicated the goods as "printed / dyed polyester X Polyester", the corresponding shipping bills indicated the goods as fabrics from "Artificial Staple Fibres", other woven fabrics of "Synthetic Staple Fibres" or "Shaub, Searves Mufflers". Accordingly, investigations were conducted and statements were recorded. It appeared that the goods for which the appellant had produced evidence of export were under AR4 / shipping bills, in fact were not the same goods cleared after the GPIs. Therefore, show cause notice was issued and demand of Rs.1,84,356.96 was confirmed, penalty of Rs.1 lakh was imposed and personal penalty of Rs.50,000/- each on Shri Shyamkumar C. Premchandani and Shri Jayram B. Devani was imposed under Rule 209A /210 of Central Excise Rules, 1944.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who vide impugned order-in-appeal dismissed the appeal for not complying with the provisions of section 35 F of Central Excise Act 1944 as neither duty / penalties were deposited nor any stay application was filed.

4. Being aggrieved by the impugned order-in-appeal, the applicants have filed revision applications under Section 35 EE of Central Excise Act, 1944 before Central

Government on the various grounds and claimed that rebate was rightly admissible to them and no penalty is imposable.

5. Personal hearing scheduled in this case on 21.12.12 at Mumbai was attended by Shri R.V. Shetty, Advocate on behalf of the applicant who reiterated the grounds of revision application and requested to condone the delay in filing revision application. Shri P.K. Bohra, DCCE, Div.-A Mumbai-I attended hearing on behalf of department and requested of uphold the impugned order-in-appeal.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that the applicants have filed applications for condonation of delay in filing revision application. Before considering the matter on merit, the application for condonation of delay are to be decided. It is observed that the revision applications are filed on 10.11.2010 against the impugned order-in-appeal dated 19.07.2001 after delay of more than 9 years. The revision applications are filed after statutory time limit as laid down in section 35 EE (2) of Central Excise Act 1944. For proper understanding of issue, the relevant section 35 EE (2) is reproduced below :-

7.1 "(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

7.2 From above, it is quite clear that applicant was required to file revision application with 3 months of communication of order. The delay upto 3 months can be condoned by Government. The revision application filed after 9 years is clearly time

barred. There is no provision under section 35 EE to condone delay exceeding 3 months.

7.3 Applicants have contended in their application that delay has occurred due to non-receipt of order-in-appeal in time, that they received the said order on 9.8.10, that applicant come to know the issue of order-in-appeal only when they received a letter from ACCE. In this regard, it is observed that with reference to applicant's letter dated April 2010, ACCE Mumbai-I vide letter F.No. V (15) Recovery /Sunny /03 dated 29.07.10 had supplied copy of said order-in-appeal dated 19.07.2001, with a request to deposit the Government dues. It is difficult to believe that said order was not received by them earlier. Applicant had filed appeal before Commissioner (Appeals) in the year 2001. The Commissioner (Appeals) had granted four opportunities of hearing but the same were not availed by applicant. Applicants did not inquire about decision in their appeal for 9 years and kept silent for years together. Even the appeal was filed without complying the provision of section 35 F of CEA 1944. The order-in-appeal was received by jurisdictional ACCE at the relevant time and therefore there is no reason for non-receipt of said order by applicant soon after the issue of same. As such, applicant's claim that they have received order-in-appeal on 9.8.2010 is not acceptable.

7.4 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Mst. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

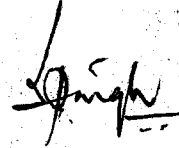
7.5 Hon'ble Supreme Court has also held in the case of UOI vs Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of

the said Section. In particular, the Custom authorities who are the creatures of the Customs act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

8. The revision applications filed after a delay of 9 years are clearly time bared and there is no provision under Section 35 EE of condone delay exceeding 3 months. Therefore, Government rejects both the applications for condonation of delay.

9. In view of above position, the said time barred revision applications are rejected as non-maintainable without going into merits of the case.

10. So ordered.

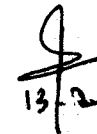


(D P SINGH)

Joint Secretary (Revision Application)

Shri Shyam Kumar C. Prem Chandani
Partner of M/s Sunny Overseas,
C/o 138/139, Azad Society,
Ambawadi, Ahmedabad

AH-nidh

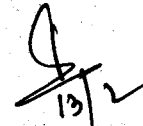


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(भागवती शर्मा/Bhagwati Sharma)
उपसह सहायक/Assistant Commissioner
C.B.E.C-OSD (Revision Application)
विश्व मंत्रालय (भारत सरकार)
Ministry of Finance (Deptt of Rev.)
राज्य सरकार/Govt of India
नई दिल्ली / New Delhi

G.O.I. Order No.117-118 /2013-Cx dated 13.02.2013

Copy to:

1. The Commissioner of Central Excise & Customs, Mumbai-I Commissionerate, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai – 400 020
2. The Commissioner of Central Excise & Customs (Appeals), Mumbai-I, Meher Building, Dady Seth Lane, Chowpatty, Mumbai – 400 007.
3. The Additional Commissioner, Central Excise Mumbai-I, New Central Excise Building, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai – 400 020
4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. SHARMA)
OSD (Revision Application)