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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
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F.No.195/67-68/2014-RA
F.No.195/07/2016-RA / 1004 Date of Issue: 29.01.2019
F.No.195/08/2016-RA

ORDER NO. 1224-1227/2020-CX (WZ)/ASRA/MUMBAI DATED 20.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Tradewell Engineering Works.

Respondent : Commissioner(Appeals), Central Mumbai-III.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. BC/398-399/M-III/2012-12 dated 30.03.2012 and CD/687/M-III/2015 dated 15.10.2015 passed by the Commissioner (Appeals), Central Excise Mumbai-III.

ORDER

These Revision Applications are filed by the M/s Tradewell Engineering Works, 121, Devendra Industrial Estate, Lokmanya Nagar, Thane-400 604 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. BC/398-399/M-III/2012-12 dated 30.03.2012 and CD/687/M-III/2015 dated 15.10.2015 passed by the Commissioner (Appeals), Central Excise Mumbai-III.

2. Briefly, the Applicant had filed rebate claims amounting to Rs. 1,60,011/-(Rupees One lakh Sixty Thousand and Eleven Only) and Rs. 1,53,290/- (Rupees One Lakh Fifty Three Thousand Two Hundred and Ninety Only) for the duty paid on export of their goods under Rule 18 of the Central Excise Rules, 2002 (herein after 'CER').

2.1 In respect of rebate claims amounting to Rs. 1,60,011/-, the Applicant was issued 2 Show Cause Notice dated 06.7.2011 and 28.07.2012. The Deputy Commissioner, Central Excise, Division Wagle-I, Mumbai-III vide Order-in-Original No 86/2011-12 dated 22.09.2011 sanctioned the rebate claim of Rs. 1,34,815/- and rejected the amount of Rs. 25,196/-

2.2 In respect of rebate claims amounting to Rs. 1,53,290/- , the department vide letter dated 18.10.2011 had asked the Applicant to clarify the reasons for availment of simultaneous benefits i.e. drawback as well as rebate. In reply the Applicant vide letter dated 20.10.2011 submitted that an order was passed in their favour whereby they could claim Excise rebate as well as Duty Drawback under Notification No. 84/2010-Cus(NT) dated 17.09.2010 and requested for the rebate of their claims. In the light of the clarification under Notification No. 84/2010-Cus(NT) dated 17.09.2010, the Deputy Commissioner, Central Excise, Division Wagle-I, Mumbai-III then vide Order-in-

Original No 95/2011-12 dated 24.10.2011 sanctioned the rebate claims of Rs. 1,53,290/-.

2.2 Aggrieved with the Orders-in-Original dated 22.09.2011 and 24.10.2011, the Department then filed appeals with the Commissioner(Appeals) Central Excise Mumbai-III, who vide Order-in-Appeal No BC/398-399/M-III/2012-12 dated 30.03.2012 allowed the departmental appeal

2.3 Aggrieved, the Applicant then filed the current Revision Application No. 195/67-68/14-RA.

2.4 Meanwhile based on the Order-in-Appeal No BC/398-399/M-III/2012-12 dated 30.03.2012, the department then issued two Show Cause Notices dated 20.09.2012 and 03.10.2012 for recovery of rebate amounting Rs. 1,34,815/- and Rs. 1,53,290/- respectively.

2.5 The Additional Commissioner, Central Excise, Mumbai-III vide Order-in-Original No. 12 & 13/VS/2013-14 dated 20.08.2013 dropped the proceedings initiated vide SCNs dated 20.09.2012 and 03.10.2012.

2.6 Aggrieved, the department then filed appeal with the Commissioner(Appeals) Central Excise Mumbai-III, who vide Order-in-Appeal No. CD/687/M-III/2015 dated 15.10.2015 allowed the department appeal.

2.7 The Applicant then filed the current Revision Applications Nos. 195/07/16-RA & 195/07/16-RA.

3. The grounds for filing the 04 Revision Applicants by the Applicant are as follow:

3.1 That it is factually incorrect that they availed drawback at higher rate. The Applicant had paid the excess amount of Rs 2,000/-. The drawback was claimed at the rate specified in the

drawback schedule. The rate of drawback specified against Chapter 8418 during August/ September 2010 was 1.1% and not 1%. Thus, they had correctly availed drawback and the allegation of excess payment of drawback is without referring to the drawback schedule.

3.3 That even if it were concluded that the Applicant availed drawback at higher rate, the remedy was to recover the excess amount of drawback paid and not to deny rebate. The department has not issued any show cause notice till date to recover the excess amount of drawback allegedly claimed and availed by the Applicant.

3.4 That the rebate of duty paid on final products cannot be denied on the ground that drawback has been claimed. The drawback relates to duties paid on 'inputs' and not on the final products. Thus, it is erroneous to contend that double benefit had accrued to the Applicant.

3.5 That the Applicant had claimed the drawback for "input stage duties" and rebate of duty paid on export goods in respect of "Finished goods stage duties". The law debars simultaneous availment of drawback and rebate of duty paid on "input' and not on the "final products". It is well settled that drawback can be availed simultaneously with the rebate of duty paid on the goods exported.

3.6 That Notification No. 84/2010-CUS(NT) dated 17.09.2010 nowhere specifies any relation of drawback with that of rebate of duty paid on finished goods that are exported. While reading the conditions No. 9 in the said notification, the lower authority had substituted the words *"duty paid on materials used in the manufacture or processing of such commodity"* with the words *"duty paid on such commodity"*. Thus deleted the entire phrase *"materials*

used in the manufacture or processing of" from the condition. This completely altered the condition. This is not permissible. One cannot read the condition as rebate of duty paid on the products exported. It is thus clear that drawback has no relation to rebate of duty paid on finished goods exported.

3.7 That as per condition No. 15 in the Notification No. 84/2010-CUS(NT) dated 17.09.2010, in order to claim drawback, a manufacturer who has exported his goods under bond or under claim of rebate has to obtain a certificate from the Superintendent of Customs or Central Excise to the effect that no Cenvat facility has been availed for any of the inputs or input service used in the manufacture of the export product. Thus, it proves that drawback is available to the manufacturer simultaneously with the rebate of duty paid on the finished goods that are export. Only that rate of drawback will differ on the conditions of availment/non-availment of Cenvat credit of duty paid on the inputs used in the export goods.

3.8 That drawback schedule provides for different rate of drawback when Cenvat credit facility is availed and when not availed. If the drawback rate shown under both the column viz "Cenvat credit availed" and "Cenvat credit not availed" is same, then it pertains to Customs component and is allowed irrespective of whether Cenvat credit is availed or otherwise. Here the Applicant had availed drawback of custom component only as drawback rate was same in both the columns. In any case, drawback is available and has not relation with the rebate of duty paid on the finished goods that are exported.

3.9 That they prayed impugned Orders-in-Appeal dated 30.03.2012 and 15.10.2015 be set aside and the Order-in-Original dated 20.08.13 sanctioning the rebate claims may be restored.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	OIA No. & dt	Revision Application	Date RA recd and No. of delay	Application for COD date
1	BC/398-399/M-III/2012-12 dt 30.03.2012 (Recd on 12.04.2012)	195/67-68/14-RA	18.02.2014 587 days delay	Filed on 18.02.2014

Appellant filed the Revision Application along with the Miscellaneious Application for Condonation of Delay (herein after as 'COD').

5. A personal hearing in the case was held on 30.08.2019 and was attended by Shri Sanjay, Advocate, on behalf of the Applicant. The Applicant informed that the Proprietor has expired since and prayed for Order-in-Appeal be set aside.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

Revision Application No. 195/67-68/14-RA

7. Government first proceeds to take up the application for COD filed by the Applicant in the Revision Application No. 195/67-68/14-RA. After hearing the COD application in detail, Government observes that the Applicant had received the copy of the Order-in-Appeal on 12.04.2012, however the Revision Application was filed before the Revisionary Authority only on 18.02.2014, thus, there is a delay of 587 days in filing the present Application by the applicant. The said application is filed after expiry of 3 months initial time period and even after the lapse of condonable period of 3 months. The only reason given by the Applicant for delay in filing the Revision Application is that "their excise clerk was having cancer and she forgot to inform the Applicant about the receipt of the Order-in-Appeal".

8. Government notes that the relevant Section of the Central Excise Act, 1944 :

> *"Section 35EE. Revision by Central Government. - (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :*
>
> .....
> .....
> .....
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> *(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."*

9. Here Government relies on the judgment of the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag and other Vs Mst. Katji and others [1987 (28) ELT (SC)] wherein it is held that when delay is within condonable limit laid down by the statute, the discretion vested in a 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 claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10. From above, Government finds that the Applicant was required to file revision application within 3 months. The delay upto 3 months can be condoned by Central Government on justified reasons. It is mandatory to follow the time limit as prescribed under Section 35EE(2). Since the revision application is filed after the condonation period of three months, the same has become clearly time barred and there is no provision under Section

35EE to condone the delay beyond the condonable period of three months. Hence the Revision Application No. 195/67-68/14-RA is liable to be rejected as time barred.

Revision Application Nos.195/07/2016-RA and 195/08/2016-RA

11. Government observes that as the Commissioner(Appeals) vide Order-in-Appeal No BC/398-399/M-III/2012-12 dated 30.03.2012 allowed the departmental appeal, the department had then issued two Show Cause Notices dated 20.09.2012 and 03.10.2012 for recovery of rebate amounting Rs. 1,34,815/- and Rs. 1,53,290/- respectively under Section 11A along with interest under Section 11AB of the Central Excise Act, 1944. The Additional Commissioner, Central Excise, Mumbai-III vide Order-in-Original No. 12 & 13/VS/2013-14 dated 20.08.2013 dropped the proceedings initiated vide SCNs dated 20.09.2012 and 03.10.2012 and hence the department then filed appeal with the Commissioner(Appeals) Central Excise Mumbai-III on the grounds that the Applicant had availed more drawback than the percentage eligible as per the Notification No. 84/2010-CUS(NT) dated 17.09.2010 in respect of the following shipping bills:

Sr.No.	Shipping Bill No. & date	Tarriff Item	Amount of rebate claimed
1	8476282 dt 20.05.2010	84189900	47,551/-
2	8536027 dt 08.06.2010	84189900	17,657/-
3	8536102 dt 08.06.2010	84189900	9,440/-
4	8592125 dt 24.06.2010	84189900	60,167/-
5	8781959 dt 23.08.2010	84189900	5,231/-
6	8821124 dt 03.09.2010	84189900	58,164/-
7	8850226 dt 14.09.2010	84189900	15,108/-

The Commissioner(Appeals) vide Order-in-Appeal No. CD/687/M-III/2015 dated 15.10.2015 allowed the department appeal and the Applicant then filed the current two revisions applications.

12. Government observes that the Original Adjudicating Authorities vide Orders-in-Original No. 86/2011-12 dated 22.09.2011, 95/2011-12 dated 24.10.2011 and 12 & 13/VS/2013-14 dated 20.08.2013 had quoted the wrong notification i.e. Notification No. 84/2010-CUS(NT) dated 17.09.2010 as the Shipping bills details given in Para 11 above were prior to that. It is noted that for the period from May 2010 to Sept. 2010 in respective of the said Shipping bills, the Notification No. 103/2008-CUS(NT) dated 09.08.2008 with effect from 01.09.2008 to 19.09.2010 was prevailing and the rates of drawback as specified in the Schedule annexed hereto is as given below:

Tariff Item	Description of goods	Unit	Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback Rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
7307	Tube or pipe fittings (for example, couple, elbows, sleeves), of iron or steel	MT	11.7%	9582	1%	819.2
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other: heat pumps other than air conditioning machines of heading 8415		1.1%		1.1%	

13. Government finds that the Applicant had availed drawback on the rate of drawback of the current shipping bills as per Notification No. 103/2008-CUS(NT) dated 09.08.2008 with effect from 01.09.2008 to 19.10.2010 which is as follows:

Sr. No.	Shipping Bill No. & date	Tarriff Item	Drawback rate when Cenvat facility has been availed	Drawback rate claimed by the Applicant
1	8476282 dt 20.05.2010	84189900	1.1	1.1
2	8536027 dt 08.06.2010	84189900	1.1	1.1

3	8536102 dt 08.06.2010	84189900	1.1	1.1
4	8592125 dt 24.06.2010	84189900	1.1	1.1
5	8781959 dt 23.08.2010	84189900	1.1	1.1
6	8821124 dt 03.09.2010	84189900	1.1	1.1
7	8850226 dt 14.09.2010	84189900	1.1	1.1

Hence it is seen that that the Applicant had availed the correct percentage drawback.

14. Government finds that the Additional Commissioner vide Order-in-Original dated 20.08.2013 had correctly placed reliance on the decision of GOI Order No. 551-569/2012-CX dated 11.05.2012.

15. Government notes that Notification No. 103/2008-CUS(NT) dated 09.08.2008, condition No. 6 envisages as under :

> *"(6) The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."*

Thus it is clear from the said condition that drawback duty can be availed when Cenvat facility has been availed but the rate applicable is lower rate. Further, the original rebate authorities while sanctioning the rebate claims had categorically observed that the Applicant had availed drawback of the Customs component only. Thus Government holds that the Applicant had availed the drawback of the Customs component only at the correct rate and rebate of the duty paid on the final product exported. Hence the Applicant is entitled to the rebate of Rs. 1,34,815/- and Rs. 1,53,290/- (wrongly mentioned as Rs. 78,503/- in the Orders-in-Original dated 20.08.2013).

16. In view of the above,

(i) Government rejects the Revision Application No. 195/67-68/14-RA on the grounds of time limit.

(ii) Government sets aside the impugned Order-in-Appeal No. CD/687/M-III/2015 dated 15.10.2015 and upholds the Order-in-Original No. 12 & 13/VS/2013-14 dated 20.08.2013 and the Revision Applications Nos.195/07/2016-RA and 195/08/2016-RA are allowed in terms of above.

17. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 124-127 /2020-CX (WZ)/ASRA/Mumbai DATED 20.01.2020.

To,
M/s Tradewell Engineering Works,
121, Devendra Industrial Estate,
Lokmanya Nagar,
Thane-400 604.

Copy to:
1. The Pr.Commr. of Central Goods & Service Tax, Thane Commissionerte, 4th floor, Navprabhat Chambers, Ranade Road, Dadar Mumbai 400 028.
2. M/s SRD Legal, 512 Business Park, City of Joy, JSD Road, Mulund(West), Mumbai 400 080
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.