

REGISTERED
SPEED POST



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.195/553/13 -RA /5210

Date of Issue: 18.11.19

ORDER NO. 143 /2019-CX (WZ)/ASRA/MUMBAI DATED 04.11.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s PEE VEE Textiles Limited, Wardha.

Respondent : Commissioner (Appeals), Central Excise and Customs, Nagpur.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
PVR/31/NGP/2013 dated 23.01.2013 passed by the
Commissioner (Appeals), Central Excise and Customs, Nagpur.

ORDER

This Revision Application has been filed by M/s PEE VEE Textiles Limited, Wardha (hereinafter referred to as "the applicant") against the Order-in-Appeal No. PVR/31/NGP/2013 dated 23.01.2013 passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur.

2. Brief facts of the case are that the applicant is the manufacturer of Synthetic Blended Yarn falling under chapter 55 of the Schedule to the Central Excise Tariff Act, 1985 having Central Excise Registration. The applicant is availing the facility of Cenvat Credit under the Cenvat Credit Rules, 2004. The applicant is exporting the excisable goods falling under chapter 55 of the schedule to the Central Excise Tariff Act, 1985 under Rule 18 of the Central Excise Rules, 2002 under claim of Rebate of duty on such excisable goods or duty paid on materials used in the manufacture or processing of such goods.

3. The applicant filed the Rebate Claim for Rs. 89,123/- of Central Excise duty paid on the goods exported by them vide ARE-1 No. 14/2010-11 dated 15.04.2010 alongwith the relevant documents. As the applicant had not submitted the original copy of ARE-1 No. 14/2010-11 dated 15.04.2010, it appeared that the applicant had not fulfilled the basic requirement i.e. submission of Original copy of ARE 1 No. 14/2010-11 dated 15.04.2010 alongwith the Rebate claim as required Rule 18 of Central Excise, Rules 2002 read with Notification No.19/2004-Central Excise, (NT) dt. 06.09.2004. Therefore, Assistant Commissioner, Central Excise, Division-II, Nagpur (Original Authority) issued Show Cause Notice to the applicant proposing to reject rebate claim filed by them. The original authority, thereafter, adjudicated the case in the aforesaid manner and rejected the rebate claim of Rs.89,123/- filed by the applicant.

4. Being aggrieved by the aforesaid Order-In-Original, the applicant filed the appeal before Commissioner (Appeals), Central Excise and Customs, Nagpur. Commissioner (Appeals) observed that impugned Order was reportedly received by the applicant on 04.11.2011 and, the present Appeal

was filed on 16.01.2012 i.e., after seventy-three days. Whereas, the appeal is required to be filed within sixty days from the date of the communication to him of such Order as per Section 35 of Central Excise Act 1944. Thus, the appeal had been filed after a delay of thirteen days. The appeal was therefore, beyond the time limit prescribed under Section 35 of the Central Excise Act, 1944. Commissioner (Appeals) further observed that the time limit for filing the appeal and condonation of delay in Central Excise matters is governed in terms of Section 35 of Central Excise Act 1944, the same is reproduced below:-

"Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) within sixty days of the communication to him of such decision or order.

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

5. Commissioner (Appeals) further observed that the applicant neither gave any reason for the delay in filing of these appeals nor did they apply for condonation of delay; that the provision of law, however, enabled them to file appeal within a further period of thirty days, in which event, the Commissioner (Appeal) is competent to condone the delay of the appeal if sufficient cause for the delay was shown by the applicant. As in the present case the applicant failed to show any cause for such delay and therefore appeal filed on 16 01.2012 was beyond the period prescribed for filing appeal under Section 35 *ibid*. Accordingly, without going into merits of the case, the Commissioner (Appeals) rejected the appeal filed by the applicant as "Time Barred".

6. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the grounds mentioned therein.

7. A Personal hearing in this case was held on 26.08.2019 and was attended by Shri Shrikrishna H. Patil-Export Executive, on behalf of the applicant who reiterated the submissions filed through revision application and also filed written submissions on the date of hearing and pleaded that the Revision Application may be allowed and Order in Appeal be set aside.

8. In their written submissions filed on the date of hearing the applicant contended that:

- by the impugned order the Commissioner (Appeals) has dismissed the appeal of the applicant on the ground of delay of 13 days in filing the appeal.
- by the order-in-original the Assistant Commissioner Central Excise, Division -II, Nagpur had rejected the rebate claim of the applicant on the ground that the original ARE-1 was not filed along with the rebate claim.
- the Hon'ble Bombay High Court in the case of UM Cables Ltd. Versus Union of India reported in 2013 (293) E.L.T. 641 (Born.) and Hon'ble Gujarat High Court in the case of Raj Petro Specialities Versus Union Of India Reported in 2017 (345) E.L.T.496 (Guj.) have held that rebate claim cannot be rejected on the ground of non-submission of Original ARE-1 so long as the other contemporaneous documents such as Shipping Bill and Bill of Lading, establishing fact of export are available.
- there was a delay of only 13_days, which was within the condonable limit during which the Commissioner (Appeals) could have condoned the delay and decided the appeal of the applicant on merits. At the time of personal hearing the Commissioner (Appeals) did not ask the applicant the reason for delay in filing the appeal. Failure on the part of Commissioner (Appeals) to do so has resulted in dismissal of its appeal, which otherwise was liable to be allowed on merits.

In view of aforesaid submissions, the applicant prayed to remand the matter back to the Commissioner (Appeals) for deciding the same on merits.

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

10. Government observes that as per Section 35(1) of the Central Excise Act, an appeal before Commissioner (Appeals) has to be filed within 60 days from the date of communication of the order of the adjudicating authority. This period of 60 days can be extended by the Commissioner (Appeals) by 30 days. In the instant case, there was a delay of only 13 days in filing appeal which is condonable in terms of the provisions of Section 35(1) of the Central Excise Act, 1944. However, the Commissioner (Appeals) has dismissed the appeal on the ground that the appeal has been filed beyond 60 days of the adjudication order and the applicant failed to show any cause for such delay before him.

11. Government in this case places its reliance on Hon'ble Gujarat High Court Order Special Civil Application No. 14988 of 2005, decided on 30-9-2005 [reported as 2006(199) ELT 404(Guj.)]. In this case, although appeal was filed within stipulated period, application for condonation of delay was not filed along with it and accordingly, appeal was dismissed by Commissioner (Appeals). Hon'ble Gujarat High Court observed that Appeal not to be dismissed on technical ground when petitioner is pursuing statutory remedy—and not inclined to give up his right of appeal and accordingly directed the petitioner to file application seeking condonation of delay before Commissioner (Appeals) and Commissioner (Appeals) was directed to condone the delay.

12. Applying the ratio of the above decision to the facts of the present case, the applicant is directed to file an application seeking condonation of delay within four weeks from the date of receipt of this Order before the Commissioner (Appeals). The Commissioner (Appeals) shall, in the first instance, deal with the said application, condone the delay, and thereafter, take up the appeal for hearing on merits.

13. In view of the above, Government sets aside the impugned Order-in-appeal remands the case back to the Commissioner (Appeals) to decide the same as per the observations given in the preceding para.

14. Revision application is disposed off in above terms.

15. So ordered.


(SEEMA ARORA)

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

ORDER No. 143/2019-CX (WZ) /ASRA/Mumbai DATED 04.11.2019

To,
M/s PEE VEE Textiles Limited.,
N.H. No. 7, Tah. Samudrapur,
Dist.(Wardha),
Post Jam-442 305,
Maharashtra.

Copy to:

1. The Commissioner of Central Goods and Service Tax, Nagpur-I, Telangkhedi Road, Civil Lines, Nagpur-440 001.
2. Commissioner, Central Goods and Service Tax, (Appeals), Telangkhedi Road, Civil Lines, Nagpur-440 001.
3. The Deputy / Assistant Commissioner, Division City, Central Goods and Service Tax, Nagpur-I, Telangkhedi Road, Civil Lines, Nagpur-440 001.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.