

REGISTERED
SPEED POST



F.No. 198/01/2015-R.A.Cx
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.....

ORDER NO. 148/2018-Cx dated 05-3-2018 OF THE GOVERNMENT OF INDIA,
~~PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL~~
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 83 of the Finance
Act, 1994 read with Section 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the
Central Excise Act, 1944, read with section 83 of Finance
Act, 1994, against the Order-in-Appeal No. 01-
CE/APPL/KNP/2014 dated 08.01.2014, passed by the
Commissioner of Central Excise (Appeals), Kanpur.

APPLICANT : Commissioner of Central Excise, Kanpur.

RESPONDENT : M/s. Pan Parag India Ltd.

ORDER

A Revision Application No. 198/01/2015-R.A. dated 09.02.2015 is filed by the Commissioner of Central Excise, Kanpur (hereinafter referred to as Applicant) against Orders—In—Appeal No. 01-CE/APPL/KNP/2014 dated 08.01.2014, passed by the Commissioner of Central Excise (Appeals), Kanpur, whereby the appeal of the respondent M/s Pan Parag India Ltd., Kanpur, has been allowed and the order of the Assistant Commissioner rejecting the rebate of duty of Rs.5,40,072/- to the respondent has been set aside.

2. The brief facts leading to the present Revision Application are that the respondent claimed rebate of duty of Rs.5,40,072/- on the export of Pan Masala to Afghanistan. However, the Assistant Commissioner rejected the rebate claims mainly on the grounds that the description of the goods mentioned in invoice, ARE-1, Shipping Bill & Bill of lading did not match. Being aggrieved, the respondent filed an appeal before the Commissioner(Appeal) who has allowed the appeal, accepting the respondent's case that they have exported the Pan Masala only and the description of exported goods as "Pan Masala Gutka" was given in the Shipping Bill by the CHA by mistake on their part only. The Revision Application has been filed by the Commissioner of Central Excise mainly for the reason that it is not clear from the export documents as to which product has been exported by the respondent and thereby rebate of duty has been wrongly allowed by the Commissioner(Appeal).
3. A personal hearing was fixed on 26.02.2018 and it was attended by Shri Jitin Singhal, Advocate, for the respondent who opposed the Revision Application filed by the applicant for the reasons already discussed in the OIA. However, no one

appeared for the applicant and no request for any other date of hearing is also received from which it is implied that the applicant is not interested in availing personal hearing in this case. Hence the Revision Application is taken up for a decision without giving any other date of hearing to the applicant.

4. On examination of the Revision Application in the light of the Orders—In—Appeal, the government observes at the outset that the Revision Application has been filed on 09.02.2015 as against the OIA dated 08.01.2015 which was received by the applicant's office on 15.01.2014 as per the Revision Application itself. Thus, the RA is filed after 390 days from the receipt of Orders—In—Appeal for which an application for condonation of delay has been filed mainly on the ground that they had filed appeal earlier before the CESTAT, New Delhi, against the Orders—In—Appeal and CESTAT has returned their appeal vide its order dated 24.11.2014 with a direction to file Revision Application with the government.

5. As per Section 35EE (2) of the Central Excise Act, 1944, a Revision Application is required to be filed within 3 months from the date of the communication of Commissioner(Appeal)'s order and the Central government is empowered to allow the application to be filed within a further period of 3 months if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of 3 months. Thus, the Revision Application can be filed with the government within 6 months at the most from the communication of the order in appeal.

6. Whereas in the instant case the Revision Application has been filed beyond 1 year from the receipt of Orders—In—Appeal and no sufficient cause which might

have prevented the applicant in filling the application in time has been disclosed. Wrong decision to file an appeal before the CESTAT by a committee of two senior Commissioners cannot be considered as a sufficient cause as envisaged in above referred Section and it is rather sheer recklessness despite a very clear provision contained in first proviso to Section 35B and Section 35EE of Central Excise Act of the Central Excise Act as per which the appeal cannot be filed before the CESTAT against the Order of the Commissioner(Appeal) relating to the issue of rebate of duty and only a Revision Application can be filed before the government. In fact, a number of revision applications relating to rebate of duty have been filed by the Department and the assesses in pay from the Kanpur Commissionerate. Hence, such glaring lapse cannot be considered as sufficient cause by any yardstick. Above all, the delay involved is far more than 1 year in this case and the government does not have power to condone the delay exceeding 3 months period.

7. Besides above, it is also observed that the Commissioner(Appeal) has examined the issue regarding export of goods and he has given several reasons to arrive at a conclusion that the goods exported are Pan Masala only and not the "Pan Masala Gutka". These reasons have not been rebutted in the Revision Application and it has been filed repeating the same reasons which were given in the AC's order for rejection of the respondent's rebate claim and which have already been held by the Commissioner(Appeal) as not sustainable. After having examined the Commissioner(Appeal)'s well reasoned order and all the export documents, the government does not have any doubt that Pan Masala has only been exported by the respondent and there is no dispute regarding compliance of all other conditions of Notification No. 32/2008 CE (NT) dated 28.08.2008.

8. In view of the above discussion, the government does not find any fault in the above referred Orders—In—Appeal and the Revision Application is rejected.

(R.P. Sharma)
5.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Customs, Central Excise & Service Tax,
117/7, Sarvodaya Nagar,
Kanpur - 208005.

ORDER NO. 148/18-1 dated 5-3-2018

Copy to: -

1. M/s. Pan Parag India Ltd., Plot No. 6 & 7, Industrial Estate, Fazalganj, Kanpur-208012.
2. Commissioner (Appeals), Customs & Central Excise & Service Tax, 117/7, Sarvodaya Nagar, Kanpur - 208005.
3. The Assistant Commissioner of Central Excise and Service Tax Division-III, 117/7, Sarvodaya Nagar, Kanpur - 208005
4. PA to AS(RA)
- ✓ 5. Guard File
6. Spare copy

ATTESTED

(Ravi Prakash)
5/3/18

(Ravi Prakash)
OSD (RA)

(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi