



**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, Cuff Parade,
Mumbai- 400 005**

F NO. 195/1647/12-RA/502

Date of Issue: 12/02/20

ORDER NO. 153 /2020-CX (WZ) /ASRA/MUMBAI 03.2.2020 DATED
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 Maharashtra Carbon Pvt Ltd.

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

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. PVR/128 to
136/NGP/2012 dated 18.10.2012 passed by the Commissioner
(Appeals), Central Excise and Customs, Nagpur

ORDER

This Revision Application is filed by M/s Maharashtra Carbon Pvt Ltd., C-59, MIDC Industrial Area, Ghaghus Road, Chandrapur, Maharashtra 442505 (herein after as 'Applicant') against the Orders-in-Appeal No. PVR/128 to 136/NGP/2012 dated 18.10.2012 passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur

2. The brief facts of the case are that the Applicant, manufacturer had cleared excisable goods namely Carbon Tamping Paste ECA falling under Chapter 38 of the schedule to the Central Excise Tariff Act, 1985 from their factory to M/s Abhijeet Ferrotech Ltd., A/c. Sarojini Engineering Works, Plot No. 50/51, APSEZ, Atonutapuram on payment of duty through Cenvat Credit Account. Applicant then filed rebate claim for Rs. 1,53,547/- under Rule 18 of Central Excise Rules, 2002 claiming that the goods had been 'exported' to SEZ developer under ARE-1 and as per Circular No. 29/2006-Cus dated 27.12.2006 and Circular No. 6/2010-Cus dated 19.03.2010, the said rebate is admissible. The Applicant also furnished certificate from the Assistant Development Commissioner, Andhra Pradesh Special Economic Zone, Vishakapatnam certifying that M/s Abhijeet Ferrotech Ltd. is an approved unit in the Andhra Pradesh Special Economic Zone, Atchutapuram, Vishakapatnam and that the subject goods have been received in full. The Assistant Commissioner, Central Excise, Divn Chandrapur vide Order-in-Original No. 48/REB/CND/2011-12 dated 18.11.2011 rejected the rebate claim under Section 11B of the Central Excise Act, 1944 on the grounds that though the name of M/s Abhijeet Ferrotech Ltd, an SEZ unit, appear in the ARE-1, Invoices, but the Purchase Order had been placed and payment had been made by M/s Sarojini Engineering Works who is neither an SEZ unit nor a Developer. The Adjudicating Authority also held that the Applicant, being a rebate claimant, had also not produced any documentary evidence duly

endorsed by the Deputy Commissioner, APSEZ, Atchutapuram, Vishakapatnam to show that M/s Sarojini Engineering Works, Contractor had been approved either for duty free material or for authorized operation in the SEZ. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise and Customs, Nagpur and the Commissioner(Appeals) vide a common Orders-in-Appeal No. PVR/128 to 136/NGP/2012 dated 18.10.2012 dismissed their appeal as time barred.

3. Aggrieved, the Appellant then filed the current Revision Application on the grounds that the date of communication of Order-in-Original as mentioned in their appeal before the Commissioner(Appeals) was factually wrong as 20.11.2011 was a Sunday and no dak is delivered by the postal authorities on Sundays. They were under a bonafide understanding that their appeal was within limitation and the Commissioner(Appeals) having given an opportunity of PH hearing to Applicant, they presumed that the appeal filed by them was perfectly in order. At the time of hearing before the Commissioner(Appeals) on 08.10.2012, the Commissioner(Appeals) ought to have pointed out that the appeal was filed one day after the expiry of normal period of limitation and sought explanation for the cause behind such delay and failure to do so has vitiated the impugned order. In the identical facts and circumstances, the Assistant Commissioner had passed 24 orders sanctioning the Applicant's rebate claims. The Department had filed appeals with the Commissioner(Appeals) which has been dismissed by the very same Commissioner(Appeals) by recording a finding the Applicant was entitled to rebate claimed by them. The Commissioner(Appeals) having passed a favourable order on merits to the Applicant in the appeal filed by the Department, the Commissioner(Appeals) ought to have condoned the delay of one day in the interest of justice. They prayed that the impugned order be quashed and set aside

4. A Personal hearing in this case was fixed on 09.10.2019 and Ms Ketaki Deshpande, Advocate appeared on behalf of the Applicant. The Applicant submitted that no Personal hearing opportunity was given and that 20.11.2011 was a 'Sunday'. Even if no application for COD was filed, the same can be condoned and also reiterated the grounds made in the revision application. They relied in the case of Unimex Chemicals Pvt Ltd. Vs Commr. of C.Ex. Mumbai-III [2002 (150) ELT 1157 (Tri.-Mumbai)].

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

6. Government observes that in respect of the appeal against Order-in-Original 48/REB/CND/2011-12 dated 18.11.2011, Commissioner(Appeals) vide Orders-in-Appeal No. PVR/128 to 136/NGP/2012 dated 18.10.2012 had dismissed the Applicant's appeal as time barred. The Applicant in Form No. EA-1 , Form of Appeal to the Commissioner(Appeals) under Section 35 of the Act, at Sl. No. 4 - Date of communication of the decision, had stated that they had received the Order-in-Original dated 18.11.2011 on 20.11.2011 and filed appeal before the Commissioner(Appeal) on 20.01.2012. Here the Applicant submitted that there was a typographical error committed by the Applicant's person-preparing their appeals as the date 20.11.2011 on which the Order-in-Original were shown to have been received by the Applicant was a 'Sunday'. Sunday is a holiday for the postal authorities. They had received the Order-in-Original through Registered Post A/D on 22.11.2011. Thus there was no delay of one day in filing the appeal under Section 35 of the Central Excise Act, 1944. Government accepts the argument and hold that there is a typographical error and the same can be condoned.

7. From the plain reading of the provisions of Section 35 of the Central Excise Act, it is clear that an appeal should be filed within sixty days from the date of communication of the decision or order that is sought to be challenged. However, in view of the proviso thereto, the Commissioner (Appeals) is empowered to allow the appeal to be presented within a further period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days. Thus, the Commissioner (Appeals) is empowered to extend the period for filing an appeal for a further period of thirty days and no more. Therefore, once there is a delay of more than ninety days in filing the appeal the Commissioner (Appeals) has no power or authority to permit the appeal to be presented beyond such period. This issue has been decided by the Supreme Court in the case-of-Singh-Enterprises v. Commissioner of Central Excise, Jamshedpur, (2008) 3 SCC 70 = 2008 (221) E.L.T. 163 (S.C.).

8. Government places reliance on the judgment of the Hon'ble CESTAT Chennai Final Order No. 421/2001 dated 20.03.2001 in the case of K. Krishna Pandian Vs Commr. of C.Ex., Chennai-II [2001 (138) ELT 343 (Tri.-Chennai)] -

"Appeal - Limitation - Delay of one day in filing - Commissioner (Appeals) claimed it to be seven days - Appeal filed in time but delay caused due to Department's direction to file appeal in proper format - Delay, if any is a marginal delay and required to be condone a per the Supreme Court and Tribunal's judgment, unless-it-cause-serious-injury-and-hardship - Section 35C of the Central Excise Act, 1944 [para. 4]."

9. Government finds that in the current case there is no delay in filing their appeal before the Commissioner(Appeals), as the Applicant had received the Order-in-Original through Registered Post A/D on 22.11.2011 but due to typographical error committed by the Applicant in preparing the appeals

wherein they stated that they had received the Order-in-Original dated 18.11.2011 on 20.11.2011. The same is condoned.

10. In view of the above position, Government sets aside the Orders-in-Appeal No. PVR/128 to 136/NGP/2012 dated 18.10.2012 to the extent it pertains to Order-in-Original 48/REB/CND/2011-12 dated 18.11.2011 and remands back the case to the Commissioner (Appeals), Central Excise and Customs, Nagpur to decide the same afresh, after due verification of documents and pass the order expeditiously.

11. The Revision Application is disposed off in terms of above.

12. So ordered.



(SEEMA ARORA)

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

ORDER No. 153/2020-CX (WZ) /ASRA/Mumbai Dated 03-02-2020

To,
M/s Maharashtra Carbon Pvt Ltd.,
"Yashojjwal", Civil Line-2,
Chandrapur,
Maharashtra 442 401.

Copy to:

1. The Commissioner (Appeals), Central Excise and Customs, Nagpur.
2. The Commissioner of CGST, Nagpur-I, Telangkhedi Road, Civil Lines, Nagpur - 440 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.