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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. 195/435-438/13-RA/28

Date of Issue: 28/05/2018.

ORDER NO. 154/157/2018 /ASRA/Mumbai DATED 14/05/2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER&EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Maharashtra Carbon Pvt. Ltd., Nagpur.

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

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. PVR/76 to 79/NGP/2013 dated 13.02.2013 passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur.



ORDER

These revision applications have been filed by M/s. Maharashtra Carbon Pvt. Ltd., Chandrapur (herein after referred as 'Applicant') against the Orders-in-Appeal No. PVR/76 to 79/NGP/2013 dated 13.02.2013 passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur.

2. The brief facts of the case are that the applicant cleared excisable goods namely Carbon Tamping Paste ECA, falling under Chapter 38 of Central Excise Tariff Act, 1985, from their factory for export on payment of Central Excise Duty. They subsequently filed rebate claims. After the rebate claims were filed, necessary verification was done and it was found that the applicant had also claimed drawback in respect of the same consignments. Hence, it appeared that the applicant had intended to avail double benefit i.e. first to earn profit by way of duty drawback scheme and secondly by way of Rebate. After issuing a show cause-notice the rebate claims were rejected by the Assistant Commissioner, Central Excise and Service Tax, Chandrapur vide Orders in original shown below:

Sl.No	Order in Original No. and Date	Amount of Rebate claims Rejected (Rs.)
1.	21/REB/CND/12-13 dated 04.10.2012	71,268/-
2.	22/REB/CND/12-13 dated 04.10.2012	64,115/-
3.	23/REB/CND/12-13 dated 04.10.2012	64,115/-
4	24/REB/CND/12-13 dated 04.10.2012	64,115/-



4. Being aggrieved with the aforesaid Orders-in-Originals, the applicant filed the appeals before Commissioner (Appeals), Central Excise and Customs, Nagpur.

5. Commissioner (Appeals) vide Order-in-Appeal No. PVR/76 to 79/NGP/2013 dated 13.02.2013 observed that all the impugned Orders (Orders in Original) as mentioned in the table above were reportedly received by the applicant on 10.10.2012 and, the present Appeals were filed on 10.12.2012 i.e. after sixty-one days; whereas, the appeal is required to be filed within sixty days from the date of the communication of such Order to the applicant as per Section 35 of Central Excise Act 1944; thus. the present appeals have been filed after a delay of one day and therefore, beyond the time limit prescribed under Section 35 of the Central Excise Act 1944. Commissioner (Appeals) in his impugned order 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. There is a delay of one day in the present appeals. Under Section 35 of Central Excise Act '1944. the applicant had only sixty days for filing an appeal. The provision of law, however, enabled them to file appeal within a further period of thirty days, in which event, the Commissioner (Appeals) is competent to condone the delay of the appeal if sufficient cause for the delay was shown by the applicants. In the present case they have failed to show any cause for such delay. The appeals filed on 10.12 2012 were beyond the period prescribed for filing appeal under Section 35 ibid. In view of his aforesaid findings, the Commissioner (Appeals) vide his impugned order rejected all four appeals as "Time Barred".

6. Being aggrieved with the above Order-in-Appeal, the applicant has filed Revision Applications under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds that :

6.1 the observation of the Commissioner (Appeals) that the appeal was filed on 61st day computing the limitation of 60 days i.e.



from the date of receipt, is legally incorrect. The Commissioner (Appeals) records a finding that the appeal was filed on 10-12-2012 and therefore there was a delay. The applicant submits that the computing the limitation of 60 days from the date of receipt the last date for filing the appeal was 9th of December 2012, which was a Sunday. The appeal was filed on Monday, the 10th of December 2012 i.e. the date of reopening of the office of the Commissioner (Appeals).

- 6.2 before dismissing the appeal on the ground of time bar, the Commissioner (Appeals) ought to have afforded an opportunity of explanation to the applicant to condone the delay if any instead of straightway dismissing the same. Such orders passed in violation of principles of natural justice have been set aside by the Hon'ble Tribunal in the following decisions :-

AMERICAN REFRIGERATOR CO. LTD. Versus COLLECTOR OF CENTRAL EXCISE, 1993 (66) E.L.T. 341 (Tribunal)

HELD : Appeal - Limitation - Natural justice - Hearing a must - Appeal although barred by time, opportunity to be given to appellant for explaining his case - Matter remanded to Collector (Appeals) to look afresh into the matter on point of limitation as well as on merits. [para 4]

b) JKHPMC LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1995 (75) E.L.T. 534 (Tribunal)

HELD : Natural justice - Appeal not presumed to be time-barred, this fact being vehemently challenged by party - Personal hearing having been denied to party, principles of



natural justice violated -Section 35A(1) of the Central Excises and Salt Act, 1944. [para 11]

c) JESUS SALES CORPORATION Versus UNION OF INDIA, 1995 (75) E.L.T. 242 (Del.)

HELD : Stay - Hearing - Oral hearing (personal hearing) necessary before disposal of stay application even though such hearing is not statutorily prescribed in second proviso to Section 4-M of erstwhile Imports and Exports (Control) Act, 1947 - Corresponding Section 35F of Central Excises and Salt Act, 1944 - Natural justice - Stay/Dispensation of pre-deposit.

6.3 without prejudice to the above, it is an established law that if the last day for filing an appeal happens to be a holiday, the appeal shall be treated as filed within limitation if it is filed on the day on which the office of the appellate authority reopens. In the present case also 59th and 60th day were Saturday and Sunday respectively and the appeal filed on Monday ought to have been treated as within limitation and the Commissioner (Appeals) should have disposed off the same on merits.

7. A personal hearing was held in this case on 07.05.2018 Shri Girish Deshpande, Advocate appeared for hearing on behalf of the applicant and reiterated the submission filed through Revisionary Application and case laws of 2012 and case law 1985(20) ELT 420(T) & 1984 (17) ELT 417 (T) and Section 10 of General Clauses Act. Hence, it was pleaded that the Order of Commissioner (Appeals) be set aside and the Revision Applications be allowed.

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

9. Government observes that the Commissioner (Appeals) rejected the appeal on the ground of limitation by observing that the Appeals were filed on 10.12.2012 i.e. after sixty-one days; whereas, the appeal is required to be filed within sixty days from the date of the communication of such Order to the applicant as per Section 35 of Central Excise Act 1944; thus the present appeals have been filed after a delay of one day and therefore, beyond the time limit prescribed under Section 35 of the Central Excise Act 1944.

10. Government finds that as per the observation of Commissioner (Appeals), the impugned orders in original were received on 10.10.2012 and, the present Appeals were filed on 10.12.2012. Under Section 35 of Central Excise Act '1944. the applicant had only 60 days for filing an appeal. In present case the period of 60 days expired on 08.12.2012.

11. Government also observes that applicant has relied on CEGAT, Special Bench 'C', New Delhi's Order dated 12.02.1985 [1985 (20) E.L.T. 420 (Tribunal)] and CEGAT, East Regional Bench, Calcutta's Order dated 29.02.1984 [1984(17) ELT 417 (Tribunal)] wherein it has been held that

"Applying the principle enunciated in Section 12 of the Limitation Act, 1968 which provides that in computing the period of limitation for any suit, appeal or application, the date from which such period is to be reckoned shall be excluded".

Applying the aforesaid principle, i.e. by excluding the the date of receipt of impugned Orders in Original, from the computation of the period of limitation, the period of 60 days in the instant case, expired on 09.12.2012.



12. Government observes that in both the aforementioned situations, 8th or 9th December, 2012 were holidays, being Saturday and Sunday. Admittedly, the appeals having been filed on 10.12.2012, which was the immediate next working day from the date of expiry of period of 60 days. Therefore, it has to be considered as if the appeals were filed within the period of limitation (of 60 days) in terms of Section 10 of General Clauses Act, 1897. Further, as per Section 4 of Limitation Act, where prescribed period of any suit appeal or application expires on a day when the court is closed, the suit appeal or application may be instituted, preferred or made on the day when the court reopens.

13. Government also places its reliance on CESTAT, West Zonal Bench, Mumbai's Order dated 4-8-2016 in Glenmark Generics Ltd. Vs Commissioner of Central Excise and Service Tax (LTU), Mumbai 2017 (347) E.L.T. 303 (Tri. - Mumbai) wherein Hon'ble Member (T) while remanding the case back to Commissioner (Appeals) to pass order on merit, observed that

"On careful examination of the case, I find that the statutory period for the appeal as per Section 35(1) ibid expires on 15-2-2009, which was a Sunday. Section 10 of the General Clauses Act, 1897 deals with the situation where the last date of filing the appeal is being Sunday, then the next working day shall be the last date for filing the appeal. In this case also, as the last date of filing the appeal was 15-2-2009 being Sunday, the appeal would have to be filed by 16-2-2009. As the appeal has been filed on 16-2-2009, I hold that the appeal is filed within the period of limitation of 60 days and the delay is condonable. Hence the impugned order holding that the appeal has been filed beyond the period of limitation is set aside and the matter is remanded back to the Commissioner (Appeals) to pass order on merits after giving an opportunity of being heard to the appellant".

14. In view of the above discussion Government holds that in the instant case the appeals have been filed by the applicant within time limit prescribed under Section 35 of the Central Excise Act 1944.

[Handwritten Signature]



15. Accordingly, Government sets aside the impugned Order in Appeal and remands the matter to the Commissioner (Appeals) for decision on merits.

16. Revision Applications are disposed off in above terms.

17. So, ordered.

(Handwritten Signature)
14.5.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

To,
M/s. Maharashtra Carbon Pvt. Ltd.
C-59, MIDC Industrial Area, Ghuggus Road,
Chandrapur- 442 406.

ORDER No. ¹⁵⁴⁻¹⁵⁷/2018-CX (WZ) /ASRA/Mumbai DATED 14/5/2018.

Copy to:

1. The Commissioner of Central Goods and Service Tax, Nagpur-I, Telangkhedi Road, Civil lines, Nagpur -440 001.
2. The Commissioner of Central Goods and Service Tax (Appeals,) Telangkhedi Road, Civil lines, Nagpur -440 001.
3. The Deputy / Assistant Commissioner, Division Chandrapur, Central Goods and Service Tax, Nagpur-I, Jagannath Baba Nagar, Datala Road, Chandrapur 442 402.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

True Copy Attested



(Handwritten Signature)
14/5/18
एस. आर. हिरुलकर
S. R. HIRULKAR