



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.195/24-26/15-RA /1926
F. No.195/33-34/15-RA
F. No.195/203-207/15-RA

Date of Issue: 10 .02.2022

ORDER No. 156-165 /2022-CX (WZ) /ASRA/MUMBAI DATED 08.02.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Bagadiya Brothers Pvt. Limited,
15-63, Bagadiya Mansion, Gr. Floor,
Jawahar Nagar, Raipur, Chattisgarh - 492001.

Respondent : Commissioner of Central Excise & GST, Raipur

Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the following Orders-in-
Appeal passed by Commissioner (Appeals), Customs,
Central Excise & Service Tax, Raipur :-

Sl. No.	Order-in-Appeal No. & Date
1.	248/RPR-1/2014 dated 17.11.2014
2.	247/RPR-1/2014 dated 18.12.2014
3.	249/RPR-1/2014 dated 18.12.2014
4.	274-277/RPR/2014 dated 18.12.2014
5.	269-273/RPR/2014 dated 18.12.2014
6.	BHO-EXCUS-002-APP-022-15-16 dated 20.04.2015
7.	BHO-EXCUS-002-APP-021-15-16 dated 20.04.2015
8.	BHO-EXCUS-002-APP-025-15-16 dated 20.04.2015
9.	BHO-EXCUS-002-APP-024-15-16 dated 20.04.2015
10.	BHO-EXCUS-002-APP-023-15-16 dated 20.04.2015

ORDER

The subject Revision Applications have been filed by M/s Bagadiya Brothers P. Limited (here-in-after referred to as 'the applicant') against the Orders-in-Appeal passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur. The issue involved in all the cases being common, these Revision Applications are being taken up for decision together. The details of the Orders-in-Appeal and the corresponding Orders-in-Original are tabulated below:-

Sl. No.	Order-in-Appeal No. & Date	Corresponding Order-in-Original date
1	248/RPR-1/2014 dated 17.11.2014	05.06.2014
2	247/RPR-1/2014 dated 18.12.2014	05.06.2014
3	249/RPR-1/2014 dated 18.12.2014	05.06.2014
4	274-277/RPR/2014 dated 18.12.2014.	16.09.2014
5	269-273/RPR/2014 dated 18.12.2014.	16.09.2014
6	BHO-EXCUS-002-APP-022-15-16 dtd. 20.04.2015.	30.09.2014
7	BHO-EXCUS-002-APP-021-15-16 dtd. 20.04.2015.	29.09.2014
8	BHO-EXCUS-002-APP-025-15-16 dtd. 20.04.2015.	30.09.2014
9	BHO-EXCUS-002-APP-024-15-16 dtd. 20.04.2015.	30.09.2014
10	BHO-EXCUS-002-APP-023-15-16 dtd. 20.04.2015.	30.09.2014

2. Brief facts of the case are that the applicant is a merchant exporter and they had filed rebate claims with respect to the goods exported by them. The rebate sanctioning authority rejected the rebate claims on the ground that the applicant had not exported the goods within six months of the same being cleared from the factory/warehouse of the manufacturer and had thus failed to comply with the condition laid down by notification no.19/2004-CE(NT) dated 06.09.2004 which required them to do so.

3. Aggrieved, the applicant preferred appeals against the said Orders-in-Original before the Commissioner (Appeals). The Commissioner (Appeals) found that the request made by the applicant for extension of the prescribed time limit was rejected by the jurisdictional Commissioner and hence upheld the Orders of the Original Authority rejecting the rebate claims.

4. Aggrieved, the applicant has filed the subject Revision Applications on the following grounds:-

(a) That the Commissioner (Appeals) had rejected the appeal on the sole ground of a letter from the Office of the jurisdictional Commissioner intimating denial of extension of time for export of goods without giving any reference of the letter or Order which was required to be conveyed to them;

(b) That the Departmental officers were in complete disregard to the factual position and the submission made by them while disposing of their application of extension of time for export;

(c) That in light of the fact that the goods in question were exported, the following questions arise:-

(i) Whether beside submission to the compliances of the departmental communication the applicant can be deprived from the benefit of provisions granted under the statute itself for the delay on the part of the revenue's inaction ?

(ii) Whether failure on the part of the department as to submission made by the applicant for the compliance of particular letter or communication again amounts for the submission of the documents?

(iii) Whether ex-post facto communication of order is not permissible under the facts of the present case?

(d) That though the communication by the Department was a letter simplicitor which was likely to affect their rights, thus appending

limitation on the right of the applicant cannot be said to be a communication simplicitor; that further the law did not countenance a situation where the person was rendered remediless; therefore the applicant solicits further as to what would be the remedy of the inadvertence made on the part of the Department for application of extension of time of export of goods outside India;

- (e) That an application with the Department for extension of time shall be deemed to be permitted, where no correspondence with regard to acceptance or denial of application conveyed by the Department for long period; they submitted that it was fit case for grant of ex-post facto permission for regularization of the matter on the merits of the case;
- (f) That their application for extension of time limit for export was rejected by the Commissioner vide letter dated 10.04.2015;
- (g) Under the facts and circumstances of the present case, they requested that lenient view be taken as there was no dispute with regard to the export of goods;
- (h) That it was a well settled position in law that the rebate and other export promotion schemes are incentive oriented beneficial legislation intended to boost export and earn foreign exchange for the country and if the substantive fact of export of goods is not in dispute and the duty paid on the said goods is accepted by the Department, the applicant as an exporter is entitled to the rebate of the duty paid on the goods exported; that the technical or procedural inaction cannot come in the way of rebate of duty and defeat the purpose of export promotion schemes; further the authority had not shown on record within the stipulated time of seven working days that such application for extension of time export had been rejected by the Department; thus the same was

deemed to be accepted by the Department; and lastly they submitted that procedural infraction under the circulars and notification are to facilitate verification of substantive requirement, therefore procedural deviation can be condoned.

In light of the above, the applicant prayed for the letter of the Hon'ble Commissioner dated 10.04.2015 to be set aside thus allowing their application for grant of permission for extension of time for export of excisable goods.

5. Personal hearing in the matter was granted to both, the Applicant and the Respondent. Ms Pariniti S., Deputy Commissioner, Division II, Raipur appeared on 09.09.2021 on behalf of the Department/Respondent. She appeared online and stated that goods were not exported within six months and extension sought was denied by the Commissioner, therefore, rebate had been rightly denied by the Commissioner (Appeals). Shri Bipin, Advocate, appeared online on 14.10.2021 on behalf of the applicant. He reiterated their earlier submissions and stated that request for extension was filed with the Commissioner, however, they neither received extension nor rejection; that in the meanwhile goods were exported; that it was only later on that the Commissioner vide his Order had rejected their request for extension. He requested that the procedural infraction be condoned and the rebate allowed.

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

7. Government notes that in the present case, the applicant is a merchant exporter and the rebate claims filed by them were rejected by the original rebate sanctioning authority as the exports had taken place after six months from the date on which the goods were cleared from the

factory/warehouse of the manufacturer. Government notes that the original Adjudicating Authority found that the applicant did not have the requisite permission for exporting the goods beyond the stipulated six months. Government finds that these decisions of the original Adjudicating Authority were upheld by the Commissioner (Appeals).

8. Government finds that notification no.19/2004-CE(NT) dated 06.09.2004 lays down the procedure, limitations and conditions that govern the claim and grant of rebate of duty paid on excisable goods that are exported. Government finds that one of the conditions as laid down at para 2(b) of the said notification reads as follows –

“ the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow ;”

The language used in the above notification make it clear that the legislature intended that in cases like the present one, the goods should be exported within six months of being cleared from the factory/warehouse of manufacturer and in case of delay, as allowed by the Commissioner. It is clear that neither the original adjudicating authority nor the Commissioner (Appeals) had the power to condone the delay on the part of the applicant. Government finds that the fact that exports took place after six months of the goods being cleared from the factory/warehouse is not in dispute. It is also a fact that the applicant did not have permission from the jurisdictional Commissioner allowing for such delay in the export of goods. Government finds that the original rebate sanctioning authority and the Commissioner (Appeals) have no option but to follow the limitations imposed by the statute and are not vested with powers to condone lapses which are in breach of such limitations. Thus, Government finds the decision of the Commissioner (Appeals) to uphold the decision of the original adjudicating authority to deny the rebate claim for not having complied with the

condition of exporting the goods within six months of its clearance from the factory/warehouse, to be proper and legal.

9. Government further finds that the applicant has submitted that their application for extension was rejected by the Commissioner vide letter dated 10.04.2015 and have, in their written submissions, prayed that the same may be set aside. Government finds that this prayer was not part of their submissions before the Commissioner (Appeals) and is hence outside the purview of the current proceedings.

10. All the Revision Applications are dismissed.


(SHRAWAN KUMAR)

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

156-165
ORDER No. /2022-CX (WZ) /ASRA/Mumbai dated 08.02.2022

To,

M/s Bagadiya Brothers Pvt. Limited,
15-63, Bagadiya Mansion, Gr. Floor,
Jawahar Nagar, Raipur, Chattisgarh - 492001.

Copy to:

1. The Commissioner of CGST & Central Excise, Raipur, CGST Building, Dhamtari Road, Tikrapara, Raipur (CG) - 492 001.
2. The Commissioner (Appeals), GST & Central Excise, Raipur, CGST Building, Dhamtari Road, Tikrapara, Raipur (CG) - 492 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.