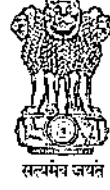


REGISTERED SPEED POST AD



**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. 195/74/12-RA

5183

Date of Issue:

02.09.2020

ORDER NO.291/2020-CX (WZ) /ASRA/MUMBAI DATED 04.03.2020 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. Ess Kay Impex
6022 World Trade Centre,
Ring Road,
Surat

Respondent : Commissioner, Central Excise, Surat-I

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. RKA/242/SRT-I/2011 dated 03.08.2011 passed by the Commissioner of Central Excise (Appeals), Surat-I.

ORDER

The revision application has been filed by M/s. Ess Kay Impex, Shivam Complex, Basement Bldg., GL-12/13, B3/B4, Vivekanand Road, Bus Stand, Puna Gam, Surat(hereinafter referred to as "the applicant") against OIA No. RKA/242/SRT-I/2011 dated 03.08.2011 passed by the Commissioner of Central Excise (Appeals), Surat-I.

2. The applicant had filed 10 rebate claims for refund totally amounting to Rs. 6,77,371/- under Rule 18 of the CER, 2002 read with Notification No. 40/2001-CE(NT) dated 26.06.2001 of duty paid on excisable materials used in the manufacture and packing of excisable goods for export under bond under Notification No. 40 & 41/2001-CE(NT). Due to non-submission of documents, the then Assistant Commissioner, Central Excise & Customs, Division-II, Surat-I had rejected these claims vide OIO No. Div-II/53/06-07 dated 29.09.2006. Since the applicant was aggrieved by the OIO, they filed appeal before the Commissioner(Appeals) who vide his OIA No. RKA/01/SRT-I/2009 dated 01.01.2009 remanded back the case for fresh decision by the original authority with direction to the applicant to produce the records called for by the sanctioning authority within 15 days of receipt of the order. The Commissioner(Appeals) had also directed the adjudicating authority to dispose off the claims with specific reasoning separately for each claim. However, the rebate sanctioning authority was not satisfied with the genuineness/correctness of the rebate claims. He found that in each and every claim there were similar discrepancies and that the claimant had failed to fulfill the conditions and follow the procedure as prescribed in Notification No. 40 & 41/2001-CE(NT) dated 26.06.2001 read with Rule 18 of the CER, 2002. He therefore held that the rebate claims were not admissible to the claimant and were liable for rejection under Section 11B of the CEA, 1944 read with Rule 18 of the CER, 2002. Therefore, the Assistant Commissioner, Central Excise & Customs, Division-II, Surat-I vide his OIO No. SRT-I/Div-II/34/10-11/Reb dated 06.10.2010 rejected the 10 rebate claims totally amounting to Rs. 6,77,371/-. On appeal by the applicant, the Commissioner(Appeals) vide his OIA No. RKA/242/SRT-I/2011 dated 03.08.2011 concurred with the findings of the original authority and endorsed his decision to reject the rebate claims.

3. Aggrieved by the OIA No. RKA/242/SRT-I/2011 dated 03.08.2011, the applicant has filed revision application on various grounds alongwith an application for

condonation of delay in filing revision application. The applicant has admitted to have received the impugned order on 04.08.2011 whereas the revision application filed by the applicant was received in the Revision Application Unit, New Delhi on 27.02.2012. The applicant has submitted therein that it is a sole proprietorship firm which has closed since a long time. The sole proprietor of the applicant was ill from 01.11.2011 to 31.01.2012. It has further been stated that as soon as the applicant was able to attend office, he immediately took steps to file the application. The applicant has calculated the delay in filing the revision application as 2 months and 27 days. They have placed reliance on the judgment in the case of Manoj Processors vs. Union of India[2005(191)ELT 85(Guj)]. In that case, the Hon'ble High Court had held that since that petitioners case was duly supported by authentic evidence in the form of medical certificate, the Tribunal ought to have straightaway condoned the delay and decided the appeal. The Hon'ble High Court therefore condoned the delay and directed the Tribunal to decide the case in accordance with law. The applicant also placed reliance on the judgments of the Hon'ble Supreme Court in the case of Dinabandhu Sahu vs. Jadumani Mangaraj - AIR 1954 SC 411, Collector of Land Acquisition vs. Katiji - AIR 1987 SC 1353G and Rame Gowda vs. Land Acquisition Officer - AIR 1988 SC 897. The applicant further averred that sub-section 2 of Section 35EE of the CEA, 1944 empowers the Central Government to condone the delay of further 3 months in filing revision application.

4. The applicant was granted opportunities for personal hearing on 23.09.2013, 30.11.2017, 27.12.2017 and 09.10.2019. However, they neither appeared for personal hearing nor filed any written submission.

5. 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. On perusal of records, Government observes that the applicant has admitted to having received the impugned OIA on 04.08.2011. They have also admitted that the limitation period of three months for filing the revision application expired on 04.11.2011. Therefore, before delving into the merits of the issue, it would be necessary to first decide whether the delay in filing revision application can be condoned.

6.1 The powers vested in the Central Government in terms of Section 35EE(2) of the CEA, 1944 are the confines within which the discretion for condonation of delay can be exercised. Sub-section (2) of Section 35EE of the CEA, 1944 is reproduced below for ease of reference.

“SECTION 35EE. Revision by Central Government. – (1) *The Central Government may,*

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.”

6.2 It would be apparent from the reading of the above sub-section that the revision application is required to be filed within three months from the date of communication of the order against which the application is being made. In the present case, the applicant by their own admission has failed to file the revision application within the period of three months from the date of communication of the order. There is no contest by the applicant on this count. The thrust of the applicants for condonation of delay is based on the fact that the sub-section (2) to Section 35EE empowers the Central Government to condone the delay of further three months in filing revision application.

6.3 In this regard, reference must be had to the procedure prescribed by the statute for filing revision application under Rule 10 of the Central Excise (Appeals) Rules, 2001. The said rule lays down the procedure for filing revision application and the date on which it would be deemed to have been submitted. Text of the said rule is reproduced below for ease of reference.

“RULE 10. Procedure for filing revision application. – (1) The revision application in Form E.A.-8 shall be presented in person to the Under Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department

of Revenue, 4th Floor, Jeevan Deep Building, Sansad Marg, New Delhi- 110 001, or sent by registered post to such officer.

(2) The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer.”

6.4 It would be evident from the reading of sub-rule (2) of Rule 10 of the Central Excise (Appeals) Rules, 2001 that the revision application is deemed to be submitted to the Under Secretary on the date on which it is received in the office of the Revisionary Authority. It appears from the manner in which the applicant has calculated the delay as amounting to 2 months and 27 days in filing appeal that they have counted the delay only upto the date on which the Revision Application has been signed by the applicant. In the present case, it is observed from the inward stamp on the covering letter to the Revision Application filed by the applicant that it has been received in the Revision Application Unit only on 27.02.2012(date of communication of order 04.08.2011). It is explicitly clear that the Revision Application has been filed even beyond the further period of three months after the initial three months which is condonable by the Central Government at its discretion in a case where the applicant was prevented by sufficient cause. The date of filing of the Revision Application is clearly beyond the outer time limit for condonation vested in the Central Government. The powers of revision vested in the Central Government are exercisable strictly within the confines of the Central Excise Act, 1944 and more specifically Section 35EE thereof. Hence, there is no scope for condonation of delay in the present case.

7. The applicant has placed reliance on a few judgments of the High Court and the Supreme Court. It has to be borne in mind that the Courts are vested with vast powers under the Constitution. The powers exercisable by the Courts are not comparable to those vested in creatures of the statute. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Singh Enterprises vs. CCE, Jamshedpur[2008(221)ELT 163(SC)] wherein the Apex Court was dealing with a situation where that appellant had failed to file appeal before the Commissioner(Appeals) within the period of 60 days and the further period of 30 days condonable where sufficient cause is shown. Their Lordships held therein that the provisions of Section 5 of the Limitation Act would have no application where the statute

sets a specific time limit for condonation of delay and that any other interpretation would render the provision providing for limitation otiose. The Hon'ble Supreme Court has in the case of Ketan V. Parekh vs. Special Director, Directorate of Enforcement[2012(275)ELT 3(SC)] reiterated the principle that when the statute provides for a specific period of limitation any other interpretation would be against the legislative intent. In the circumstances, the exercise of discretion by the Central Government where the applicant is prevented by sufficient cause from presenting the application would be restricted to the limit of another three months after the initial three months of the communication of the order which is sought to be contested. The facts in respect of the present case clearly bear out that the revision application was filed after the expiry of three month period post communication of the impugned order and the condonable period of further three months. Therefore, the revision application is clearly time barred.

8. The revision application filed by the applicant is dismissed as time barred.

9. So ordered.

(SEEMA ARORA)

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

ORDER No. 291/2020-CX (WZ) /ASRA/Mumbai DATED 04.03.2020

To,
M/s. Ess Kay Impex
6022 World Trade Centre,
Ring Road,
Surat

Copy to:

1. The Commissioner of CGST & CX, Surat-I Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy