

REGISTERED SPEED POST



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. 195/162-A/2017-RA

17098

Date of Issue: 28.09.23

ORDER NO. 362/2023-CX (WZ)/ASRA/MUMBAI DATED 27.9.23 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.

Subject : - Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No.
PK/15/BEL/2017 dated 24.01.2017 passed by the
Commissioner of Central Excise (Appeals-II), Mumbai-II.

Applicant : M/s. Vardhman Exports

Respondent: The Commissioner of CGST & CX, Belapur.

ORDER

The Revision application is filed by M/s. Vardhman Exports (hereinafter referred to as 'applicant') against the Order-in-Appeal No. PK/15/BEL/2017 dated 24.01.2017 passed by the Commissioner of Central Excise (Appeals-II), Mumbai-II.

2. The brief facts of the case are that the Applicant has filed a refund claim on 26.04.2007 for an amount of Rs. 3,99,355/-. The said claim was arising out of the Order-In-Appeal No. AT/728/Bel/2006 dtd. 04.12.2006 passed by the Commissioner (Appeals), Mumbai-II, setting aside the OIO No. JC/64/VP/05-06 dtd. 31.03.2006 of Joint Commissioner, Belapur. The applicant, as per the direction of the Department, had earlier paid a total amount of Rs. 3,99,355/- from the cenvat credit account, out of the total confirmed duty amount of Rs. 16,07,955/- & penalty amount of Rs. 3,00,000/-vide the OIO dtd. 31.03.2006. The Assistant Commissioner, Belapur II Dn, Belapur, vide OIO No. Asstt. Commr/1812/07-08 dtd. 21.01.2008 has rejected the claim to the applicant on the ground of unjust enrichment under the provisions of Section 11B of the Act, and credited the amount to the Consumer Welfare Fund under Section 11D. Appeal filed by the applicant against the said order was dismissed by the Commissioner (Appeals) as time barred vide OIA dtd. 12.08.2008 by rejecting the request for condonation of delay citing absence of valid reasons. While disposing of the Appeal Nos. E/951/11 filed by the applicant against the said Order-in-Appeal dtd. 12.08.2008, the CESTAT, Mumbai, vide its Order No. A/87619/16/SMB dtd 29.04.2016 has observed that the reasons given in the impugned order for not condoning the delay of two days are not acceptable & as the appeal was not heard on merit same is set aside and remanded to the Commissioner (Appeals) to decide the issue on merit. Accordingly, Appellate authority decided the case on merits and rejected the appeal filed the applicant.

3. Being aggrieved by the impugned OIA, the applicant has filed the present revision application

4. Personal hearing in this case was fixed for 07.10.2022, 20.10.2022, 27.04.2023, 04.05.2023 and 18.05.2023. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. The government has observed that this case has traversed through various stages, moving from the Adjudicating Authority to the Appellate Authority, then to the Revisionary Authority, and eventually to the CESTAT. The Revisionary Authority, in its Order No. 217/2011-CX dated 08.03.2011, rejected this matter on the grounds that it falls beyond its jurisdiction and is non-maintainable. Subsequently, the Applicant appealed to the CESTAT, which, in turn, remanded the case back to the Appellate Authority with instructions to review it on its merits. The Appellate Authority then examined the case on its merits and rejected the Applicant's appeal. The Applicant, despite the prior rejection by the Revisionary Authority on the basis of non-maintainability, has submitted this revision application again. Government reproduces the relevant portion of its earlier order dated 08.03.2011:

" 5. The Government has gone through the oral and written submissions of the case and notes that this revision application is against above order-in-appeal which rejected the appeal as time barred. The applicant's request of condoning only two days delay which was well within condonable limit, on the stated reasons including the illness of the advocate was not accepted (as valid) by the Commissioner (Appeals), In this case, demand of Rs.1607955/- Confirmed under Rule 57CC of Central Excise Rules, 1944 by Adjudicating Authority was dropped by Commissioner (Appeals). In pursuance to Commissioner (Appeals) order, applicant filed refund of Rs.399335/- under Section 11B of Central Excise Act, 1944 for the amount which was deposited towards demand during adjudication proceedings. The refund was sanctioned but credited in the Consumer Welfare Fund. Against said order-in-appeal, applicant has filed this revision application.

6. In reference to above, Government notes that in this case the applicant has filed revision application under Section 35EE of the Central Excise Act, 1944. As per provisions of Section 35EE (1), the revision application is filed before Central Government against the order-in-appeal passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B of the Central Excise Act, 1944 The issue involved herein, as detailed above, is not of such nature. The Instant appeal against the above order-in-appeal passed by Commissioner of Central Excise (Appeals) in matter of refund of already paid amount under the provisions contained in Rule 57CC of the said Rules, as detailed above,

lies to Appellate Tribunal (CESTAT) in terms of Section 358 (1) Ibid. Hence, the revision application filed by the applicant is beyond jurisdiction and is not maintainable under Section 35EE of the Central Excise Act, 1944.

7. The revision application is therefore being filed beyond jurisdiction and the same is dismissed as not maintainable.”

7. In view of above position, Government finds that the revision application filed by the applicant is beyond jurisdiction and is non maintainable under section 35 EE of the Central Excise Act, 1944.

8. Revision application is disposed off on the above terms.

Shrawan
27/9/23
(SHRAWAN KUMAR)

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

ORDER No. 362/2023-CX (WZ) /ASRA/Mumbai Dated 27.9.23

To,

1. M/s. Vardhman Exports, 586, Mody Estate, L.B.S. Marg, Ghatkopar(W),Mumbai-400086.
2. The Pr. Commissioner of CGST & C.Ex.,Belapur, Ist Floor CGO Complex, CBD Belapur, Navi Mumbai-400614..

Copy to:

1. Commissioner of Central Excise (Appeals), Mumbai-II, Utpad Shulk Bhavan Sector C-24, Block E: BKC, Bandra (E), Mumbai-400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.