



REGISTERED
SPEED POST

F.No.195/44/2013-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....31/11/14.....

ORDER NO. 373/14-Cx DATED 04-12-2014 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. ARCHANA PANDEY TIWARI, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the orders-in-appeal No.68 to 73/CE/DLH/12 dated 29.10.12 passed by the Commissioner (Appeals) Central Excise, Delhi-I.

Applicant : M/s Pawan Jain & Sons, D-38, SMA Industrial Area, G.T.K. Road, New Delhi-110033.

Respondent : The Commissioner of Central Excise, Delhi-I, C.R.Building, I.P.Estate, New Delhi

ORDER

This revision application is filed by M/s Pawan Jain & Sons, New Delhi against the orders-in-appeal No.68 to 73/CE/DLH/12 dated 29.10.12 passed by the Commissioner of Central Excise (Appeals), Delhi-I,

2. Brief facts of the case is that the applicant had filed 6 rebate claims seeking rebate of duty amounting to a total of Rs.97,74,926/- of duty paid on input used in the manufacture of end product, i.e. SS Utensils exported under Rule 18 of the Central Excise Rules, 2002 after clearance from their factory premises under erstwhile Notification No.41/2001-CE(NT) dated 26.06.01 as amended.

2.1 The original authority sanctioned part rebate claim in respect to the refund application filed by the applicant by allowing input-output norms in the ratio of 1.3 : 1.0 (SION C-832 fixed by DGFT for SS Coil) of SS Utensils manufactured from SS Flat/Bars whereas the actual consumption was claimed in the ratio of 1.882 : 1.000 for export of SS Utensils made out of SS Flats by the applicant.

2.2. Aggrieved by these orders-in-original, the applicant has filed appeals before Commissioner (Appeals) who rejected the same being time barred.

2.3 Being aggrieved by the impugned orders-in-appeal, the applicant filed R.A.No.195/219-224/10-RA before JS (RA). The JS (RA) vide revision order No.1103-1108/2011-Cx dated 25.8.11 remanded the case back to decide the issue after considering submission of applicant.

3. In remand proceedings, the Commissioner (Appeals) rejected the appeal again as time barred.

4. Being aggrieved with the impugned orders-in-appeal, the party has filed this revision application under Section 35EE of the Central Excise Act, 1944 before Government on following grounds:

4.1 With regard to the issue of time bar, the Joint Secretary, RA has considered the submission of the applicant, that if at all the orders were dispatched on 30.07.2008 against the postal receipts, there could not have been other instance for the department to hand over a physical copy of the said order on 21.08.2008 to the representative of the applicant. It is pertinent to mention that the applicant had neither received a copy of the order-in-original No. 218-R to 223-R dated 30.07.2008, through postal service which was allegedly dispatched on 30.07.2008 neither they have been received by the applicant on 21.08.2008 and that the applicant should be granted an opportunity to cross examine the dispatch department as to how and on what basis have the department delivered physical copy of the order dated 30.07.2008 to the alleged representative of the applicant on 21.8.2008. It was the duty of the dispatch department to verify the authenticity of the person receiving the certified copy of the order dated 30.07.2008 while handing over its copies to the alleged representative of the applicant. Further, it is also submitted that the applicant has never authorized anyone on its behalf to receive the copy of the order dated 30.07.2008 and it is not in the knowledge of the applicant as to who has received the certified copies of the order on 21.08.2008.

4.2 It is again reiterated that the observation made by the "Government" vide its order No. 1103-1108/11-Cx dated 25.08.2011 is imperative in the instant case. Para 8 is reproduced below:

"The Government observed that the respondent department had stated that the impugned orders were dispatched on 30.07.08 and the same were received by the representative of the applicants on 21.08.08 and they had also produced the photocopy of dispatch register wherein dated signature of the representative of the applicants appeared against the respective dispatch entries in respect of the impugned orders. The applicant claimed that the impugned orders were not received by either the applicant or their representative by post or by hand on 21.8.08."

In view of the aforesaid observation of the Government, the impugned orders (order-in-original No. 218-R to 223-R dated 30.07.2008) were sent i.e. dispatched by the

Department on 30.07.2008 with dated signatures of the authorized representative appearing against the respective dispatch entry as produced before the Govt. The observation in the said order made it clear that, if the orders were dispatched, then there is no possibility that the dated signature of the authorized representative could appear in the dispatch register, inasmuch as it was sent by post and not received by hand, as alleged by the respondent.

4.3 The Commissioner of Central Excise (Appeals) has passed the impugned Order-in-Appeal on the ground that the appellant has not proved the receipt of the impugned order in original on 21.10.2008 whereas the records of the Central Excise prove that the appellant through his representative has received the order by hand two months before i.e. 21.08.2008. However, unless contrary is proved after the cross examination of the Dispatch Department, the Revision Authority shall accept the contended averment of the Applicant and consider 21.10.2008 as the receipt date of the Order dated 30.07.2008. Further, the applicant has already filed an Affidavit duly notarized dated 23.07.2011, stating that:

"1. That the Order-in-Original No. 219-224-R dated 30.07.2008 (Copy) has been received by us on 21st October, 2008

2. That before that date neither me nor my Authorized representative has received the orders from the office of the Assistant Commissioner, Central Excise, Division-I, Delhi-I.

3. That I have not received the orders through post or otherwise dispatched from the office of the Assistant Commissioner, Central Excise, Division-I, Delhi-I."

4.4 It may be kindly noted by this Hon'ble Revision Authority that the Applicant has received the 6 Order-in-Original(s) on 21.10.2008 and has filed the said 6 Appeals before the Office of the Commissioner of Central Excise (Appeals) on 06.01.2009. As per the above mentioned law, the Applicant had time of filing the Appeal alongwith the application for condonation of delay till 21.01.2009 and the said Appeals were filed by the Applicant on 06.01.2009. The Applicant has preferred the said application for condonation of delay due to the reason that the Proprietor of the Applicant was out of



the country for business activity and thereafter was ill-health and not in a position to look into the legal matter of the Firm as well as to discuss the same with his legal advisor in respect to the rebate Order(s) for a time period of about two months. Moreover, in his absence there was no one in his staff who could look after the legal matters.

5. Personal hearing scheduled in this case on 30.09.2014 was attended by Shri Rajiv Tuli, Advocate on behalf of the applicant who reiterated the grounds of revision application. Shri V.S.Kalshain, Superintendent attend hearing on behalf of the department. The department vide letter dated 27.10.2014 submitted relevant records of their dispatch register.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant was sanctioned part rebate claim. The applicant filed appeal before Commissioner (Appeals), who rejected the same as time barred. The applicant filed R.A.No.195/219-224/10/RA-Cx before JS (RA), who vide revision order No.1103-1108/2011-Cx dated 25.8.2011 remanded the cases back to the appellate authority. The appellate authority vide impugned order-in-appeal again rejected the appeals as time barred. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that the appellate authority has held that impugned orders-in-original dated 30.7.2008 were received by the representative of the applicant company on 21.8.2008 and hence, applicant's appeals filed on 6.1.2009 is clearly time barred. The applicant contended that none of their authorized representative received the impugned orders on 21.8.2008 as alleged by the department. Neither, they received any orders through post. The applicant contended that they received order only on 21.10.2008 and the appeal has been filed within condonable time limit of appeal period. Government now proceeds to discuss this issue in light of statutory provision in this regard and various case laws.

8.1 Government finds that Section 153 of the Customs Act, 1962 reads as under:

SECTION 153. Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served –

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

Hon'ble Bombay High Court vide order dated 3.2.12 has clarified the meaning of 'service' of order sent by speed post by interpretation of Section 37C (1)(a) of the Central Excise Act, 1944.

The relevant paras read as under:

"2. In the present case, against the order-in-original dated 7th June, 2007 the assessee had filed an appeal and the same was dismissed by the Commissioner of Central Excise (Appeals) on 31st March, 2008. It is the case of the appellant-assessee that a copy of the order passed by the Commissioner of Central Excise (Appeals) on 31st March, 2008 was not served upon the assessee. It is only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st March 2008 and the same was made available to the assessee on 26th February, 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th May, 2010. Hence, it is contended that the appeal filed is in time.

3. However, the CESTAT by the impugned order dated 28th January, 2011 *Cravina Fabrics (P.) Ltd. v. CCE 2011 (268) ELT 387 (Tri. - Mum.)* dismissed the appeal filed by the appellant-assessee as time-barred on the ground that a copy of the order of the Commissioner of Central Excise (Appeals) dated 31st March, 2008 was in fact dispatched on 1st April, 2008 by speed post and, therefore, the assessee must have received the order of Commissioner of Central Excise (Appeals) in 2008 itself. Relying upon the judgment of the CESTAT in the case of *Classic Marbles v. Commissioner of Customs (Import) 2009 (245) ELT 679 (Tri. - Mum.)* and the decision of the Punjab and Haryana High Court in the case of *CCE v. Mohan Bottling Co. (P.) Ltd. 2010 (255) ELT 321 (Punj. & Har.)*, the dismissed the appeal by holding that once a copy of the order was forwarded by speed post on 1st April, 2008, the requirement of Section 37C of the Central Excise Act, 1944 were complied and, therefore, the appeal filed by the assessee on 17th May, 2010 is beyond time and the same is liable to be dismissed.

4. Section 37C of the Act reads thus;

37C. Service of decisions, orders, summons etc.—(1) Any decision or order passed or any summons or notices issued under this act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorized agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1)."

5. As per section 37C(1)(a), it was mandatory on the part of the Revenue to serve a copy of the order of Commissioner of Central Excise (Appeals) by registered post with acknowledgment due to the assessee. Admittedly in the present case, a copy of the order has not been sent by registered post. In these circumstances, it could not be said that the requirement of Section 37C has been complied with. The CESTAT was wrong in relying upon the judgment of the Punjab and Haryana High Court in the case of Mohan Bottling Co. (P.) Ltd. (supra), as in that case a copy of the order was sent by registered post, whereas in the present case, the order is said to have been sent by speed post and there is no evidence of tendering the decision to the assessee.

6. In these circumstances, in our opinion the decision of the CESTAT that the requirements of Section 37C have been complied with cannot be accepted. As per Section 37C(1)(a) of the

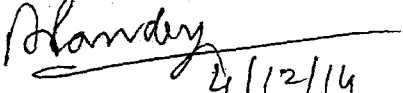
Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to send it by registered post with acknowledgment due to the assessee or its authorized agent. In the present case, neither of the above have been complied with by the Revenue. Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) was received for the first time on 26th February, 2010 would have to be accepted. Consequently, the decision of the CESTAT that the appeal filed by the assessee was time-barred cannot be sustained."

8.2 On perusal of above judgement, it is quite evident that in terms of Section 37C(1)(a), the order needs to be sent by registered post with acknowledgement due, for whom it is intended or his authorized agent, if any. In this case, the impugned orders-in-original were shown to have been issued on 30.7.2008. However, the department claimed that the impugned orders were received by some representative of the applicant company on 21.8.2008. No satisfactory reasons have been given by the department as to why the orders have not been sent by post in spite of having shown as issued on 30.7.2008, and the same orders have been handed over to the representative of the applicant company. If same orders have been shown as issued on 30.7.2008 through post, the same orders cannot be handed over to any person by hand. No satisfactory explanation has been given by the department for such contradiction. Further, the department could not bring on record any valid authorization by the company authorizing the person, who has purportedly received the impugned orders-in-original. Under such circumstances, the impugned orders-in-original cannot be said to have been served to the concerned party. There is also no proof of service of orders, if sent by post to the applicant. Under such circumstances, Government has no option but to accept the applicant's contention that they were not served the impugned orders-in-original either through post or through hand delivery as claimed by the department. As such, applicant's contention regarding receipt of the impugned orders-in-original, only on 21.10.2008 required to be accepted and that the the appeals were filed before Commissioner (Appeals) on 6.1.2009, within condonable time limit of 90 days. Hence, the appeals cannot be treated as time barred and may be decided on merits.

9. In view of above, Government sets aside impugned orders-in-appeal and remands the case back to appellate authority to decide the same afresh on merits. Reasonable opportunities of hearing may be afforded to party to present their case.

10. Revision application is disposed off in above terms.


11. So, ordered.


4/12/14

(Archana Pandey Tiwari)

Joint Secretary to the Government of India

M/s Pawan Jain & Sons
D-38, SMA Industrial Area,
GTK Road, New Delhi-110033.

Attested


(शुक्ल शर्मा/Shaqwat Shama)
सहायक आयोग/Assistant Commissioner
GREG-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
नई दिल्ली/Deptt. of India
New Delhi



Order No. 373/14-Cx dated 04-12-2014

Copy to:-

1. The Commissioner of Central Excise, Delhi-I, CR Building, I P Estate, New Delhi.
2. The Commissioner of Central Excise (Appeals), Delhi-1, C R Building, I P Estate, New Delhi.
3. The Assistant Commissioner, Central Excise, Division-I, Deepshikha Building, Rajendra Place, New Delhi.
4. Shri Rajiv Tuli, Advocate, Vaidat Legale Services, Advocates & Solicitors, A-415, Defence Colony, New Delhi - 110024.
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



(B.P.SHARMA)
OSD (Revision Application)