

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  
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Mumbai- 400 005

F. NO. 195/16/14-RA

2431

Date of Issue: 20/12/2018

ORDER NO. 422/2018-CX (WZ) /ASRA/Mumbai DATED 30.11. 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  
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s PSL Tex-Styles Pvt. Ltd. Mumbai  
Respondent : Commissioner of Central Excise, Thane-I  
Subject : Revision Application filed, under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal  
No. M-I/RKS/93/2011 dated 14.03.2011 passed by  
the Commissioner (Appeals) Central Excise, Mumbai-I.



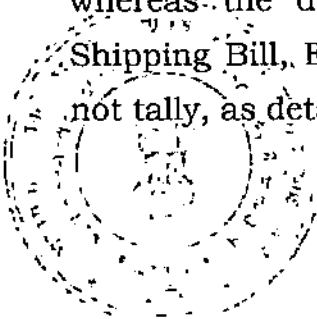
**ORDER**

This Revision Application has been filed by PSL Tex-Styles Pvt. Ltd. Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. M-I/RKS/93/2011 dated 14.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant is merchant exporter and had filed rebate claims in respect of duty paid goods manufactured by M/s Anant Systex Pvt. Ltd., and M/s Janki Corporation limited respectively falling under the jurisdiction of Division-Bhilwara of Jaipur-II Commissionerate and M/s Resham Overseas, Mumbai amounting to Rs.5,87,775/- (Rupees Five Lakh Eighty Seven thousand Seven Hundred Seventy Five Only). The jurisdictional Assistant Commissioner (Rebate) Central Excise, Mumbai-I vide Order in original No.239/R/05 dated 25.11.2005 sanctioned the rebate claims fully, on the basis of findings that as certification was issued by the Customs Officer on the original and duplicate copies of ARE-1s, the goods were actually exported and accepted the duty paid character of goods on the basis of certification issued by the jurisdictional Range Superintendent on the triplicate copy of ARE-1.

3. The said Order in Original dated 25.11.2005 was reviewed by the Commissioner, Central Excise, Mumbai-I Commissioner and appeal was filed before Commissioner (Appeals) Central Excise, Mumbai- I on the following grounds :-

a) that on scrutiny of the claims, it was observed that in respect of goods cleared under ARE-1 No.18 dated 20.06.05, and Shipping Bill No. 5398469 dated 20.6.05, the goods exported have been described on the ARE-1 as 'Dyed fabrics made out of spun yarn from Man Made Fibre and Man Made Filament yarn with or without metalige yarn', whereas the description and composition shown on the relevant Shipping Bill, Export invoice, Bill of Lading and the packing list did not tally, as detailed in table below:-



ARE-1 No. & Date	Description as per ARE-1	Shipping Bill No. & Date & FOB Value	Description/Composition in Shipping Bill	Export Invoice No. & Date with Description and value	Description in corresponding packing list	Bill of Lading No. & Description
18/20.06.05	Dyed fabrics made out of spun yarn from Man Made Fibre and Man Made Filament yarn with or without metallic yarn- & composition as Twill 2/30 PV65/359087.300 mtrs	5398469 dated 20.06.05, the FOB value in Indian rupees is shown as Rs. 5,121646.26	Dyed Poly, Visc Blended Fabric 34% (poly staple fibre/ 19% vis staple	4127/20.6.05 Dyed Poly.Visc.Blen ded fabric (34% poly.staple fibre/ 19% vis.staple) in USD 11840.75	Fine Quality 55% Wool Touch 45% Cosmos	DCM/05 /LM/AE DXB/58 3 Polyster Viscose Twill Woolman Suiting 58" x 18 to 30 yards



b) that the assessable value as shown in the said ARE-I is Rs. 5,79,455.65 whereas in the Shipping Bill No. 5398469 dated 20.06.05, the FOB value in Indian rupees is shown as Rs. 5,121646.26, which is less than the assessable value. Therefore, the goods exported by M/s PSL Tex Styles P. Ltd., as detailed in the ARE-1 No.18/05-06 dated. 20.6.2005 against the Shipping Bill No 5398469 dated 20.06.05, involving duty amount of Rs.47,283.66



20.6.2005 do not match with the description of goods mentioned in the Shipping Bill No. 5398469 dated 20.06.05 and other documents such as Export Invoice, Packing list & Bin of Lading, as discussed in pars 8 above, the same cannot be said to be the goods which were cleared under said ARE-1 dated 20-06-2005. Therefore, rebate amounting to Rs. 47,283.66 in respect of the said ARE-1. has been wrongly sanctioned to the respondent-assessee.

10. I therefore agree with the appellants that the Assistant Commissioner (Rebate), Central Excise, Mumbai-I Commissionerate, has erred in sanctioning the rebate claim in respect of the goods exported vide subject ARE-1 /Shipping Bill and hence the impugned Order-in-Original No. 239/R/05, dated 25.11.2005, sanctioning the rebate claim amounting to Rs. 47,283.66 is not legally sustainable and hence the impugned Order-in-Original is liable to be set aside, to that extent. Accordingly, I pass the following order:-

#### ORDER

11. I set aside the Order-in-Original No. 239/R/05, dated 25.11.2005, passed by the Assistant Commissioner (Rebate) Central Excise, Mumbai-1 Commissionerate, to the extent of sanction of rebate claim amounting to Rs.47283.66 in respect of ARE-1 No.18 dated 20-06-2005 and allow the appeal filed by the appellants with consequential relief. The impugned Order in original is modified to the above extent.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application mainly on the following grounds that :

5.1 the in their letter dtd.07.03.2011, have submitted that while preparing the Customs invoice No. PSL/4127/2005-06 dtd.20.06.2006, description of the goods was erroneously copied from previous invoice of the invoices of the same ARE-1. AS regards the description in Bill of Lading, the same has been mentioned as per the L/C terms and conditions. (ii) Actually this is only a clerical mistake which has happened unknowingly through oversight by the person who has prepared it. This mistake needs to be condoned. The Commissioner (Appeals). rejected the rebate claim of Rs.47, 283. 66 on the ground that the FOB value is shown as Rs.5,12,646.26 and whereas the assessable value shown on the ARE1 is Rs.5,79,455.65.

5.2 as regards assessable value as seen different in ARE-1 and Shipping Bill, they submit that the assessable value in ARE-1 includes cost, manufacturing cost and profit which amounts to



more than export value, whereas, for shipping bill they have not considered export refund and other incentive. At the most the amount of duty difference between the FOB value and Assessable value could have been deducted instead of full amount of duty paid under the Central Excise Invoice has been rejected in the impugned OIA. They have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. This is not a kind of benefit given to the exporter. This is only a reimbursement. Therefore, a genuine rebate claim should not be denied only on silly technical grounds as is done in the present case. This is nothing but discouraging export.

- 5.3 the export is made under ARE-1s and the jurisdictional Superintendent of Central Excise and Inspector of Central Excise have certified the duty payment particulars and RG23A Pt.II E.Nos. in the back of the ARE 1. The goods cleared under ARE1 and Central Excise Invoice directly go to the port. Along with the goods the original and duplicate copy of the ARE-1 and duplicate copy (Transporter copy) of the Central Excise Invoice are sent. The Triplicate and quadruplicate copies of ARE is are submitted to the Jurisdictional Central Excise authorities within 24 hours. In the Port as soon as the goods are received Appraiser or Examiner of the Customs verifies the documents and pass an order of let Export' and endorses all the documents i.e. ARE 1, Export Invoice and Packing slip. After that the Preventive officer or Supdt. of Customs allows the export and certifies on ARE1 with the Ship's name, Date of export, Shipping Bill No. and date, Mate Receipt No. & date and on the Shipping Bill- Name of the Vessel, Mate Receipt No. & date, Date of sailing etc. The ARE1 and Shipping Bill is endorsed by the Customs authorities. The original ARE 1 is returned to the exporter open and duplicate in tamper proof sealed cover. The Jurisdictional Central Excise officer also returns the third copy in sealed cover after certifying the duty payment particulars. All these three copies of the ARE1 (Original, Duplicate and Triplicate in sealed cover) submitted along with self authenticated copy of Shipping Bill E. P. Copy, Duplicate copy of the C--Ex Invoice, Bill of lading, Export Invoice, Packing slip, B.R.C., Mate Receipt submitted to the Deputy Commissioner along with Form-C for sanction of the claim. Therefore, when all these documents are filed for claiming the rebate claim only for procedural mistake rejection is not correct.

- 5.4 all other particulars like- Gross weight, Net weight, No. of Packages all tallied each other with ARE 1, Central Excise Invoice and Shipping Bill, Bill of Lading, Export Invoice and



Packing slip. Further ARE1 numbers shown on the Shipping Bill and Shipping Bill No. and Mate Receipt Numbers are shown on the ARE 1. Mate Receipt shows Bill of Lading Number and Shipping Bill No. The ARE 1 and Shipping Bill are countersigned by the P.O./Supdt of Customs. When physical export is accepted and there is no other allegation simply on a minor technical mistake genuine rebate claims should not be rejected. They have received all the duty payment certificates and also the same has been independently called by the A.C. (Rebate) from the jurisdictional Range Supdt. ) There is no allegation that the duty debited at the time of export is not proper and correct. Once duty paid character of the export goods has been accepted there is no question of non applicability of Section 3. Further physical export of goods has been accepted. (iii) Applicants state and submit that there is no allegation against debit of duty on exported goods. The Applicants are the Merchant exporter who is concerned with the payment of duty on exported goods which is accepted by the department. However same has been verified and found correct. These are same goods and it is certified by the central excise officers as well as Customs authorities. The ARE1 No. is shown on the Shipping Bill and the S.B. No. shown on the ARE1. Both these entries are certified by the Customs Authorities. When the physical export is certified, even if there is any clerical mistakes are there this needs to be condoned in the interest of justice. Joint Secretary, R.A. G.O.I. has passed many order in respect of condonation of procedural mistakes if any in the interest of export, Applicants rely on the same. In this connection Applicants rely on CBEC Circular No. 81/81/94 —CX dated 25.11.1994.

- 5.5 Rule 18 of Central excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09,2004 allows rebate of duty on excisable Goods exported through a merchant exporter. Since there is no denying the fact that proper duty was paid on the finished products were duly exported, the Applicants cannot be penalised for merely for non-compliance of procedures. Applicants rely on the following judgments

- a) Krishna Filaments Ltd 2001 (131) ELT 726 (GOI). - Marked as EXHIBIT -V.
- b) CBEC Circular No. 510/06/2000-CX., dated 3-2-2000

5.6 in the above genuine circumstance and bonafide facts, it may kindly be appreciated that, the said Order-in-Appeal to the



extent of rejection of rebate claim of Rs. 47,283.66 is, improper, in correct, against the law, and thus is required to be set aside in limine.

6. A Personal hearing held in this Revision Application was attended by Shri Pravin Dave, Director and Shri Sajimon K.C., Export Manager of the applicant company. They reiterated the submission filed through Revision Application and pleaded that the substantive benefits of the rebate cannot be denied because of technical infractions which are trivial. Hence, it was pleaded that Order in Appeal be set aside and the Revision Application may be allowed.

7. 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. Government observes that there was a delay of 1005 days by the applicant in filing the present Revision Application and the applicant has also filed Application dated 31.12.2013 for condonation of delay. In the said application the applicant has contended as under:

7.1 The Applicants are filing this Condonation of Delay application before the JOINT SECRETARY, GOVERNMENT OF INDIA, R.A. for condoning the delay in filing Revision Application against Order-in-Appeal No. M-I/RKS/93/2011 dtd.14.03.2011 issued vide F. No. 24/R/M-I/2008/323 dtd.15.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai - I received by the Applicants on 18.12.2013. Hence this Condonation of Delay Application. Actually there is no delay in filing the Revision Application since the Order in Appeal received by them through Additional Commissioner of Central Excise, Mumbai-I on 18.12.2013, when the Applicants visited his office for the Personal Hearing on SCN Issued on the same issue when the appeal has been filed by the Department for rejection of rebate claim to the extent of Rs.47283.66.

The COD is being filed as an abundant precaution.





7.2. The delay in filing the Revision Application from the date of issue of Order in Appeal and filing the Revision Application is approx 1005 days. Actually there is no delay in this case as the Applicant's have received the Order in Appeal through the Additional Commissioner, Central Excise, Mumbai-I on 18.12.2013. The Copy of the Order in Appeal was not received by the Applicants from the office of the Hon'ble Commissioner (Appeals) who issued the impugned Order in Appeal. The delay was not intentional and occurred because of not receiving the Order in Appeal. However, the Applicants pray that the unintentional delay of 1005 days in filing the R.A. may be condoned in the interest of justice.

7.3. The Applicants state and submit that the delay was beyond their control so also it was not intentional and may be condoned. However, submit that the Rebate claim was filed within the prescribed statutory period as per Section 11B of Central Excise Act,1944. On merit they have a strong case.

7.4 The Applicants state and submit that they have submitted all the relevant documents alongwith the Revision Application and the case is in their favour. If the delay is not condoned the genuine exporter will suffer for none of his fault and the same cannot be repaired later on. It is also the intention of the Government to boost export to help the genuine exporters. In view of the same they submit that Hon. Joint Secretary may condone the genuine unintentional delay.

7.5 The Applicants therefore pray:-

(a) That the delay of 1005 days in filing the present Revision Application may be condoned.

(b) The Revision Application and Stay Application filed by the Applicant may be heard and disposed of on merit



8. Government observes that in their application for condonation of delay, the applicant has stated that the impugned Order in Appeal issued vide F. No. 24/R/M-I/2008/323 dtd.15.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai - I received by them on 18.12.2013, that actually there is no delay in filing the Revision Application since the Order in Appeal received by them through Additional Commissioner of Central Excise, Mumbai-I on 18.12.2013, when the Applicants visited his office for the Personal Hearing on SCN issued on the same issue when the appeal has been filed by the Department for rejection of rebate claim to the extent of Rs.47283.66; that the copy of the Order in Appeal was not received by the Applicant from the Office of the Commissioner (Appeals) who issued the impugned order and that the delay was not intentional and occurred because of not receiving the Order in Appeal.

9. For understanding the relevant legal provisions, the relevant section is reproduced below :

**“Section 35EE. Revision by Central Government.** - (1) *The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :*

.....  
 .....  
 .....

(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.”*



*From above, it is clear that the applicant was required to file revision application within 3 months. The delay upto 3 months can be condoned. Since the revision application is filed even after the condonation period of three months, the same has become clearly time barred and there is no provision under Section 35EE to condone the delay beyond the condonable period of three months.*

10. Further, it has been held by the Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others v. Mst. Katji & Others* reported in 1987 (28) E.L.T. 185 (S.C.) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

11. Supreme Court in the case of *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*, (2008) 3 SCC 70 = 2008 (221) E.L.T. 163 (S.C.), wherein the Court in the context of Section 35 of the Central Excise Act, 1944, has held thus :

*"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the said period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the*



*appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the Legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

12. Government however, in the instant case, observes that the impugned Order in Appeal issued vide F.No.24/R/M-I/2008/323 dtd.15.03.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai - I was received by the applicant on 18.12.2013, However, applicant has not adduced any evidence in support of this contention or any efforts made / communications sent to the concerned Commissioner (Appeals) office for supplying the copy of the said order. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the one seeking relief to satisfy the authority about the reason for the delay on their part. In the present case there is a delay of 1005 days in filing the Revision Application. As already explained at para 9 supra, the statutory period for filing Revision Application is 90 days. Government observes that the applicant have filed Revision Application much beyond this threshold. The applicant has merely made a claim that they did not receive the Order in Appeal whereas the outward number on the first page of the Order in appeal reveals that the Order in Appeal dated 14.03.2011 had been dispatched on 15.03.2011. All the Supreme Court Judgments referred to in foregoing paras are binding precedent.

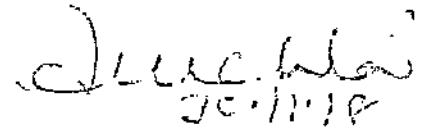
13. In view of the aforesaid discussion Government holds the Revisionary Authority, Government of India can condone the delay in filing application



only upto extended condonable period of three months and not beyond that. Since in the present case, the revision application is filed even after the condonation period of three months, Government holds that the same has become clearly time barred and there is no provision under Section 35EE of the Central Excise Act, 1944 to condone the delay beyond the condonable period of three months.

14. The revision application thus stands dismissed as time barred in terms of above without going into the merits of the case.

15. So, ordered.



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

ORDER No. <sup>422</sup>/2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018

To,  
M/s PSL Tex-Styles Pvt. Ltd,  
6/147, Mittal Ind Estate,  
Andheri Kurla Road, Andheri (East),  
Mumbai 400 059.p

Copy to:

1. The Commissioner of CGST & CX, Mumbai South, 13<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai – 400 021.
2. The Commissioner of CGST & CX, (Appeals-I), 9<sup>th</sup> Floor, Piramal Chambers, Jijibhoy lane, Lalbaug, Parel, Mumbai 400 012.
3. The Deputy / Assistant Commissioner, (Rebate) , CGST & CX, Mumbai South, Air India Building, Nariman Point, Mumbai – 400 021
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

