

F.No.195/752-753/2013-RA

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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.195/752-753/2013-RA/803

Date of Issue: 29.01.2021

ORDER NO. 46 - 47 /2021-CX (WZ)/ASRA/MUMBAI DATED 20.01.2021
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.

Applicants : M/s Mafatlal Industries Ltd.

Respondents : Commissioner(Appeal-III), Central Excise, Ahmedabad.

Subject : Revision Application filed, under Section 35EE of the Central Excise
Act, 1944 against the Order-in-Appeal No
65/2013(Ahd.III)/SKS/Commr.(A)/Ahd dated 31.03.2013 passed by
the Commissioner (Appeals-III), Central Excise, Ahmedabad.



ORDER

This Revision Application is filed by M/s Mafatlal Industries Ltd., Textile Division, Nadiad Unit, Kapadvanj Road, P.B. No. 55, Nadiad – HO-Kheda – 387 001 (hereinafter referred to as “the Applicant”) against Order-in-Appeal No 65/2013(Ahd.III)/SKS/Commr.(A)/Ahd dated 31.03.2013 passed by the Commissioner (Appeals-III), Central Excise, Ahmedabad.

2. The issue in brief is the Applicant had filed a refund claim of Rs. 89,302/- on 24.06.2010 in terms of Notification No. 41/2007-ST dated 06.10.2007 as amended for the Service tax paid on service received for export of the goods for the quarter July 2009 to September 2009. On scrutiny of the claim, some discrepancies were noticed as they had not submitted form 'R' duly filled, the export invoice No. with description of service had not been correlated, etc. Further it was observed that they neither fulfilled the conditions of the Notification Nos. 41/2007-ST dated 06.10.2007 and 17/2009-ST dated 07.07.2009 nor had they submitted complete documentary evidences showing the payment of service tax by the Applicant for which they had claimed the refund, Bank Realization Certificate, Bank statement for substantiating. It was also noticed that they had claimed refund of Service tax paid on service which were not specified under Notification No. 41/2007-ST. Therefore, the Applicant was issued a Show Cause Notice dated 23.07.2010. The Assistant Commissioner, Central Excise, Division-Nadiad, Ahmedabad-III vide Order-in-Original No. 21/ST/REF/AC-GAR/Ahd-III/2012-13 dated 30.08.2012 rejected

- (i) the refund claim of Rs. 2,188/- as time barred as refund claim had been filed beyond one year from the date of export;
- (ii) the refund claim amounting to Rs. 53,907/- as they had failed to submit the proof of payment made to service provider;
- (iii) the refund claim of Rs. 33,207/- for courier charges as they had not produced the documentary evidence relating to use of the courier service



to export of goods as well as they had failed to submit the proof of payment made to service provider.

Thus refund claim totalling amounting to Rs. 89,302/- was rejected. Aggrieved the Applicant filed appeal before the Commissioner (Appeals-III), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No. 65/2013(Ahd.III)/SKS/Commr.(A)/Ahd dated 31.03.2013 rejected their appeal and upheld the Order-in-Order dated 30.08.2012.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) All the relevant documents such as Invoice of the service provider etc. was not scrutinized by the original authority nor by the appellate authority.
- (ii) The CA certificate was produced before the original as well as appellate authority, but none of the authority had mentioned any reason for not accepting it as a proof of payment especially when the same has not been disputed.
- (iii) From the Order-in-Original, it appears that except on the technical grounds that are mentioned therein, the refund claims were admissible otherwise.
- (iv) The refund claims were reject for want of some basic documents such as Export invoices, ARE's, etc. It is not understood, if these basic documents were not there at the time of filing of refund papers, when how the claim was entertained. As per Para 2.4 of Chapter 9 of CBEC's Central Excise Manual, the refund claim was expected to be taken on file only when it was accompanied by all relevant supporting documents. In their case, the original refund claim is said to be filed on 24.06.2010 as per Order-in-Original and the same was reject on technical grounds of non-availability of documents on 30.08.2012 i.e. nearly after 02 years and 02 months. No justification was given in the Order-in-Original for this abnormal delay in rejecting the claim and the appellate authority had also not passed any order on his observation in this regard.



- (v) At the time of personal hearing on 04.08.2011 as recorded in the Order-in-Original that *"proof of payment of service tax have been submitted"* and subsequently recorded in the Order-in-Original that *"on verification of the subject refund claim the same has not been submitted."* This aspect had also not been examined by the appellate authority and no order in this regard had been made by him.
- (vi) The Appellate authority failed to pass order in this regard as to how without disputing the CA certificate, the refund claim was reject. In absence of independent finding of the appellate authority, the impugned order is not a speaking and a reasoned order.
- (vii) Circular No. 120/01/2010-ST dated 19.01.2010 clearly states that no one to one correlation is required between inputs and outputs and scrutiny voluminous record. And in case of incomplete invoices, the CA Certificat should clearly bring out the nature of the service and this will assist the officer in taking the decision. In this they relied in the decision of
- (a) CESTAT, Ahmedabad in the case of CCE Ahmedabad-II Vs M/s Dishman Pharmaceutical & Chemicals Ltd, Ahmedabad
- (b) Hon'ble High Court in case of M/s Madhave Steel Vs UOI.
- (viii) The Applicant prayed that the impugned order be set aside with consequential relief.

4. A personal hearing in the case was held on 07.01.2021, 14.01.2021 and 21.02.2021. None appeared for the hearing. However, the Applicant vide their email dated 05.01.2021 requested to take this email as an application for withdrawal of the ongoing revision proceedings.

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

6. On perusal of the records, it is observed that the Applicant vide their email dated 05.01.2021 submitted that



"We have decided to withdraw our revision application and we do not wish to pursue this matter any further. We request to take this email as an application for withdrawal of the ongoing revision proceedings. Kindly let us know in case we are required to do anything further in this regard so that the matter can be put to rest."

7. In view of the Applicant's request, the Government dismisses the current Revision Application as withdrawn.

Shrawan
20/11/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. ⁴⁶⁻⁴⁷/2021-CX (WZ)/ASRA/Mumbai DATED 20.01.2021.

To,
M/s Mafatlal Industries Ltd.,
Textile Division, Nadiad Unit,
Kapadvanj Road, P.B. No. 55,
Nadiad - HO-Kheda - 387 001.

Copy to:

1. Commissioner of CGST, Ahmedabad South, Central Bhavan, Ambawadi, Ahmedabad - 380 015.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare copy

