

REGISTERED
SPEED POST



F.No. 195/388/15-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... 12/1/18

ORDER NO. 50/2018-CX dated 11-01-2018 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI RAJPAL SHARMA, 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 the Order-in-
Appeal No. JAL-EXCUS-000-APP-168-15-16 dated
17.07.2015 passed by the Commissioner of
Central Excise, Jalandhar, Chandigarh.

APPLICANT : M/s JMP Manufacturing Co. Ltd.

RESPONDENT : Commissioner of Central Excise, Jalandhar

ORDER

*A Revision Application No. 195/388/15-RA has been filed by M/s JMP Manufacturing Co., Jalandhar (hereinafter referred to as the applicant) against Order in Appeal No. JAL-EXCUS-000-APP-168-15-16 dated 17.07.2015, passed by Commissioner (Appeals) Chandigarh.

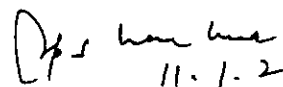
2. Brief facts of the case leading to the filing of the Revision Applications are that the applicant had filed a rebate claim of Rs. 37687/- which was rejected by the original adjudicating authority for the reason that goods were exported after the expiry of six months from the date of clearance from the factory. Being aggrieved by the order the applicant filed an appeal with Commissioner (Appeals). But he has also rejected the appeal on the ground that the filing of appeal was beyond the period of 60 days and the cause attributed to delay was insufficient and hence not condonable. This Revision Application has been filed mainly on the following grounds.

- i) There is no dispute regarding filing of rebate claim under section 11B of Central Excise Act 1944 within the stipulated period.
- ii) The period of 30 days beyond 60 days are condonable under first proviso to section 35 of Central Excise Act.
- iii) Following case laws support their case.
 - a) Liberty Shipping Agencies Pvt. Ltd. Vs. CC 2014 (307) ELT 530 (T)
 - b) CCE Vs. Birla Tyres 2005 (179) ELT (CESTAT)
 - c) Dorcas Market Makers Pvt. Ltd. Vs. CCE 2012 (281) ELT 227 (MAD)
 - d) Alpha Garments Vs. CCE 1996(86) ELT 600(T)
 - e) CCE Vs. Hindustan Petroleum Corporation Ltd. 1985(21) ELT 904
 - f) Benara Bearings Pvt. Ltd. Vs. CCE 1999(105) ELT (398) (T)
 - g) Associated Cement Co. Ltd. Vs. CCE 1999 (111) ELT 257 (T)

4. Personal hearing was held on 13.12.2017 which was attended by Sh. Sudhir Malhotra, Advocate, for the applicant who reiterated the above grounds.

5. On examination of the Revision Application, it is noticed that the applicant has not produced any evidence relating to any permission given by the jurisdictional Commissioner for extending the period beyond six months for export of goods as stipulated in notification No. 19/2004 CE (NT) dated 06.09.2004 or even a copy of any such request made to him in this regard. Therefore, the fact of not having exported the goods within the stipulated period of six months under notification 19/2004 remain uncontroverted. Coming to the main reason for rejection of their appeal by the Commissioner (Appeals) that the appeal was filed before him beyond specified period of sixty days, the Commissioner (Appeals) has discussed the reason given by the applicant for delayed filing of the appeal in detail and he has clearly held that the delay cannot be condoned on flimsy grounds of mere ill health of one personal. The applicant has not elaborated in the Revision Application as to how the Commissioner (Appeals)'s order can be faulted and how the illness of their one partner only prevented them from filing the appeal in time. The applicant has also not given any evidence regarding any serious illness of their partner, the role of the partner who was stated to be ill and the overall structure of the firm to assess the genuineness of the reason given by them for filing the appeal beyond stipulated period of sixty days and the correctness of the order of the Commissioner (Appeals). In absence of all these relevant details, the order of the Commissioner (Appeals), considering the illness of one of the partners as flimsy ground for late filing of the appeal, cannot be questioned at this juncture and the decisions relied upon by the applicant are not found relevant.

7. In view of the above discussion the Revision Application is rejected.


11.1.2018

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s JMP Manufacturing Co.,
983, Preet Nagar, Sodal Road, Jalandhar

ORDER NO. 50/2018-CX dated 11-1-2018

Copy to:-

1. The Commissioner of Central Excise, Ludhiana Commissionerate, (Jalandhar Division), Central Excise House, "F" Block, Rishi Nagar, Ludhiana- 141 001 (Punjab).
2. The Commissioner (Appeals) Central Excise, Comm'rate Chandigarh-II Central Revenue Building, Sector 17-C, Chandigarh.
3. O-i-O No. Rebate/304/AC/Jal/2014 issued under C. No. IV(16)30/Reb/1833/13/1972 dt. 03.02.14 by Ld. Asstt. Commissioner, Central Excise Division, Jalandhar.\
4. Mr. Sudhir Malhotra, Advocate, 13-R Hukum Chand Colony, Near D.A.V. College, Jalandhar 098140-44175.
5. PS to AS(RA)
6. Guard File.

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)