

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. 195/37/15-RA

18459

Date of Issue:

28.07.2020

ORDER NO. 522 / 2020-CX (WZ) / ASRA / Mumbai DATED 23.06.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Indian Oil Corporation Ltd., Vadodara.

Respondent : Commissioner of Central Excise, Vadodara-I.

Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
VAD/EXCUS-001-APP-622/2014-15 dated 06.01.2015 passed
by the Commissioner (Appeals-I), Central Excise, Customs and
Service Tax, Vadodara.



ORDER

This revision application is filed by Indian Oil Corporation Ltd.[M/s IOCL], Vadodara (hereinafter referred to as 'the applicant') against the Order-in-Appeal No. VAD/EXCUS-001-APP-622/2014-15 dated 06.01.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara.

2. Brief facts of the case are that the applicant had filed a refund claim of Rs. 10,35,602/ (Rupees Ten Lakh Thirty Five Thousand Six hundred and Two only) before the Jurisdictional Assistant Commissioner of Central Excise & Customs. Division-IV, Vadodara-I, claiming refund of Central Excise duty paid on 589.29 KL of Aviation Turbine Fuel [ATF], during January and February-2005. The adjudicating authority rejected the said refund claim vide Order in Original No. Ref/107/IOCL/AC.DIV-IV/VJ/2014-15 dated 08.08.2014. on the ground that the export documents clearly establish that the clearance purported to have been exported were in fact the goods manufactured by M/s. BPCL and not by M/s. IOCL,

3. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals-I), Vadodara. The said Appeal was filed by the applicant after 63 days of receipt of the Order in Original and hence there was delay of 3 days in filing the said appeal. Though the applicant had filed application for condonation of delay (COD), the Commissioner (Appeals) vide impugned Order dismissed the appeal filed by the applicant as time barred. observing as under:-.

"Since beyond the normal period of sixty days, at maximum a delay of further thirty days is condonable by Commissioner (Appeals) as per the power vested to him vide Section 35(1) of the Central Excise Act, 1944, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal. I note that appellant has submitted that delay caused due to non receipt of necessary instructions, approvals, information and documents from their Head Office due to Diwali vacation. I find such plea of the appellant without much force. Also, the appellant is not a new assessee and is one of the "navratna company" of Govt. of India and is involved in the manufacture of excisable goods since long and as such they are obviously well established with due knowledge of Central Excise procedures. In my considered opinion the reasons for condonation of delay is not justified in any manner by the appellant. The power of condonation of delay cannot be exercised in routine manner without valid reasons. There is no satisfactory reason / ground to justify the delay of 03 days in filing the appeal. I



find that in the instance case, there is an admitted delay of 03 days and no justifiable cause for the same has been given by the appellants, which barred them from filing an appeal in time. The law provides 60 days for filing an appeal which itself is sufficient time period. I find no valid reason for condonation of delay in the instant case. Therefore, in view of this situation, the request of the appellant for condonation of delay is not justified and cannot be considered, even if it were to be considered for admitted delay of 03 days, beyond the permitted 60 days. Therefore, I hold that the instant appeal is liable to be dismissed being hit by time bar in terms of Section 85(3A) of Finance Act, 1994".

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the grounds mentioned therein.

6. Personal hearing in this case was held on 19.11.2018 before my predecessor which was attended by Mr. Arshdeep Singh, Assistant Manager, on behalf of the applicant. He reiterated the submission filed through Revision Application and written submissions filed during the said personal hearing. It was pleaded that delay of 3 days in filing appeal be condoned and Commissioner (Appeals) may please be asked to pass the order on merit. Another opportunity of hearing was offered to the applicant on 09.12.2019 on account of change of revisionary authority. However, neither the applicant nor anyone from the respondent department appeared for the said hearing. As the applicant had been heard by my predecessor and no complex questions of law or facts are involved in the instant Revision Applications, Government proceeds to decide the case on the basis of available records and written submissions filed by the applicant on 19.11.2018. The applicant in its additional written submissions filed on 19.11.2018 contended as under:-

- *The sole ground on which the Commissioner(Appeal) rejected their appeal is that there was a delay of 03 (three days) in filing appeal. Normal period of filing appeal was 60 days from the date of receipt of order. In terms of the first proviso to section 35(1) of Central Excise Act, 1944 the Commissioner(Appeal) has the power, on sufficient cause being shown, to condone any delay in filing appeal up to a period of 30 (thirty) days.*
- *It was explained that the delay was owing to time taken in internal approval and intervening Deepawali Holidays and they submitted "Application for Condonation of Delay". However, the Commissioner (Appeal), without assigning any cogent reason or ground, brushed aside their explanation stating that "appellant is not a new assessee and is one the "navratana company" of Govt. Of Indio and is involved in the manufacturing of excisable goods since long and as such they are*



obviously well established with due knowledge of Central Excise Procedure. In my considered opinion, the reasons for condonation of delay is not justified in any manner by the appellant".

- The above reasoning of the Commissioner (Appeal) is perverse, entirely illegal and against the law as declared by various judgments of superior courts including Hon'ble Supreme Court. In 1987 (281 ELT 185 (SC) the apex court has laid down clear and concise guideline with regard to condonation of delay provided the appellate authority has the power to condone the delay. Two very important principles pronounced by the Hon'ble Court are applicable in our case. First that "there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk " And Second that "The expression 'sufficient cause' employed by the Legislature is adequately elastic to apply the law in a meaningful manner to subserve the ends of justice"
- The last date for filing appeal 24th Oct. (Friday) 2014 was Deepawali Holiday, 25th and 26th being Saturday and Sunday and off day for Central Excise offices, appeal was filed on 27th Oct. 2014. In this regard reference may kindly be made to 2017 (347) E.L.T. 303 (Tri. - Mumbai).
- The Commissioner (Appeal) should have followed the principles enunciated by the Apex Court in and condoned the delay of mere three days for which sufficient cause were shown. In this regard reliance is placed on 2005 (183) E.L.T. 337 (S.C.) wherein the Hon'ble Supreme Court held that "what constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* [1975 (2) SCC 840] this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* [ILR (1918) 45 Cal 94 (PC)] it was observed that true guide for a Court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain v. Kuntal Kumari* (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned"

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.

8. Government observes that in the instant case the applicant had received the order of the adjudicating authority on 25.08.2014 and the appeal was to be filed



within 60 days before the Commissioner (Appeals), i.e. on or before 24.10.2014, but the same has been filed on 27.10.2014. As per Section 35(1) of the Central Excise Act, 1944 an appeal before Commissioner (Appeals) has to be filed within 60 days from the date of communication of the order of the adjudicating authority. This period of 60 days can be extended by the Commissioner (Appeals) by 30 days. In this case, though the Commissioner (Appeals) held that the appeal is filed after 3 days i.e. after the statutory period of 60 days but within the condonable period, still he rejected the appeal on the ground that the reason for causing delay is not satisfactory.

9. The applicant in its application for condonation of delay filed before Commissioner (Appeals) explained that the reason for delay was that the necessary instructions, approvals, information and documents were required to be obtained from their Delhi Office (Head Office) for the purpose of preparing and finalizing the Appeal, and this got delayed due to Diwali Vacation which was about to start from 23.10.2014 and also because of administrative reasons. The applicant further submitted in COD application that the delay has thus occurred due to bonafide reasons without there being any negligence or any other malafide purpose and requested Commissioner (Appeals) to condone the same. However, Commissioner (Appeals) did not find the explanation tendered by the applicant in COD application justifiable in any manner as the reasons for condonation of delay were not satisfactory. "

10. On considering the rival contentions the Government is of the considered view that the explanation given by the applicant for delay in filing of the appeal is satisfactory and Commissioner (Appeals) should have accepted the same to condone the delay, more so because delay was also due to Diwali festival intervening in between and last date for filing appeal 24th Oct. (Friday) 2014 was Diwali Holiday for the applicant and 25th and 26th being Saturday and Sunday and off day for Central Excise offices, appeal was filed on 27th Oct. 2014.

11. It is well settled that while dealing with the application for condonation of delay, the Courts/Tribunal should take liberal view. Ordinarily the doors of justice should not be shut to a party on technical ground of limitation. Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag v. Mst. Katiji reported in [(1987) 2 SCC 1987 (28) E.L.T. 185 (S.C.)] has held that a liberal approach shall be followed in




condoning the delay because ordinarily a litigant does not stand to benefit by lodging an appeal late.

12. Under the circumstances, by following the principles laid down in the above said judgment of Hon'ble Supreme Court, Government condones the delay of 3 days in filing the appeal before the Commissioner (Appeals) which is within permissible limit of 30 days after expiry of 60 days. In view thereof, Government sets aside the Order-in-Appeal No. VAD/EXCUS-001-APP-622/2014-15 dated 06.01.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara. and the matter is remanded back to the Commissioner (Appeals) with the direction to decide the appeal on merits after giving opportunity of being heard to the applicant.

13. Revision Application succeeds in the above terms.

14. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 522/2020-CX (WZ) /ASRA/Mumbai, DATED 23.06.2020.

To,

M/s. Indian Oil Corporation Ltd.,
Gujarat Refinery,
P.O. Jawaharnagar, Koyali,
Vadodara - 391320.

ATTESTED


B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to :-

1. Commissioner of CGST, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of CGST (Appeals), Central Excise Building, 1st Floor Annexe, Race Course Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of CGST Division-II, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.

