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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.195/227/2014-RA/4955

Date of Issue: 7/11/19

ORDER NO. 66 /2019-CX (WZ)/ASRA/MUMBAI DATED 4.10.2019 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 Angoora International.

Respondent : Deputy-Commissioner(Rebate), Central Excise, Kalyan-III Dn.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 39 PD/39/TH-I/2014 dated 29.05.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai-I.

ORDER

This Revision Application is filed by the M/s Angoora International, 53, 147/149, Gaiwadi Sadan, 2<sup>nd</sup> Floor, Dr. Vegas Street, Kalbhadevi, Mumbai 400 002 (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. 39 PD/39/TH-1/2014 dated 29.05.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai-I.

2. The issue in brief is that the Appellant had filed 10 rebate claims dated 13.12.2005 total amounting to Rs.8,28,218/- (Rupees Eight Lakh Twenty Eight Thousand Two Hundred Eighteen only) under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER') which were rejected by the original adjudicating authority on the grounds of insufficient documentation. They then filed appeals which were rejected by the Commissioner(A) by upholding the Order-in-Originals. They then filed Revision Application and the Joint Sectary (RA) vide GOI Order No. 752-761/12-CX dated 04.07.2012 remanded the matters back to the original adjudicating authority for fresh consideration. The Deputy Commissioner, Central Excise Kalyan-III Division, Thane-I Commissionerate vide Order-in-Original No. R-424/12-13 dated 12.03,2013 sanctioned the rebate claims to the Appellants. The Appellants then vide their letter dated 07.06.2013 staked claim for payment of interest on the delay in payment of the rebate amount. The Deputy Commissioner, Central Excise Kalyan-III Division, Thane-I Commissionerate vide letter F.No. V/RC/KIII/Th-1/Angoora/Rebate/2011 dated 05.08.2013 informed the Appellants that the rebate claim was sanctioned in denova adjudication proceedings on 12.12.2013 and consequent to which the payment of rebate claim was made on 15.03.2013 and hence the interest clause is not applicable to it. The Appellant then sought a speaking order rejecting their claim for interest

from the Deputy Commissioner and was informed by the Superintendent (Tech-I), Thane-I Dn vide F.No. V/RC/K-II/Th-I/Angoora/Rebate/2011 dated 15.01.2014 to file an appeal against the Deputy Commissioner, Central Excise Kalyan-III Division, Thane-I Commissionerate letter F.No. V/RC/KIII/Th-I/Angoora/Rebate/2011 dated 05.08.2013 for non payment of interest on the rebate claims. Aggrieved, the Appellant then filed appeal with the Commissioner(Appeal-I), Central Excise & Service Tax, Mumbai-I, who vide Order-in-Appeal No. 39 PD/39/TH-I/2014 dated 29.05.2014 rejected the appeal as time barred.

3. Being aggrieved, the Applicant filed the Revision Application on the following grounds :

- 3.1 that the Commissioner(Appeal) erred in law in rejecting their appeal and that the view of the Commissioner(Appeal) and that of the Dy. Commissioner are wrong in the eyes of law, therefore the same should be set aside.
- 3.2 that the liability to pay interest on the delayed refund is a statutory obligation and the same cannot be washed off by passing bucks. The appeal was not barred as the Appellant had received the letter from the Dy. Commissioner's office only on 18.01.2014 to approach the Appellate Authority against the Appellant's letter dated 05.8.2013 and then this appeal was filed on 14.02.2014, i.e. within 27 days and well within the mandatory time limit of 60 days.
- 3.3 That the said impugned order is ex-facie and manifestly mala fide, null and void, without the authority of law and/ or without jurisdiction and strikes at the root of quasi judicial discipline enshrined under the constitution. The impugned order is required to be set aside on this ground alone.

3.4 that interest for delay in sanctioning rebate claims is governed by the provisions of Section 11BB of the Central Excise Act, 1944. Further the Board's Circular No. 670/61/2002-CX dated 01.10.2002 issued on the non-payment of interest in refund/ rebate cases which are beyond three months of filing also clarifies that *"the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three month. The jurisdiction Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest"*. Therefore the impugned orders are required to be set aside on this ground alone. In this relied on few case laws.

3.5 that legal provisions makes it is clear that interest is payable to the Applicant if refund/ rebate is sanctioned beyond three months of filing the rebate claim. In their case, the rebate sanctioning authority has chosen to remain silent about the interest to be granted for delay in sanction of rebate.

3.6 that they prayed that the impugned order be set aside and their Revision Application be allowed.

4. A personal hearing in the case was held on 24.09.2018. Shri N.S. Patel and Shri Girish Bhambai both advocates appeared on behalf of the Applicant. They reiterated the submission filed through RA and it was pleaded that RA be allowed and the interest on delayed rebate claims be given. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 19.08.2019. The Applicant vide their letter dated 19.8.2019 submitted that they had already attended P.H. and hence they do not have any thing further to submit in the matter.

5. 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.

6. On perusal of the records, the Government observes that Appellant had filed 10 rebate claims dated 13.12.2005 total amounting to Rs.8,28,218/-. Based on the GOI order No. 752-761/12-CX dated 14.01.2010, the remanded case was adjudicated by the Deputy Commissioner, Central Excise Kalyan-III Division, Thane-I Commissionerate vide Order-in-Original No. R-424/12-13 dated DC Thane-I letter F.No. V/RC/KIII/Th-I/Angoor/Rebate/2011 dated 05.08.2013 informed the Appellants that the rebate claim was sanctioned in denova adjudication proceedings on 12.03.2013 and consequent to which the payment of rebate claim was made on 15.03.2013 and hence the interest clause is not applicable to it. wherein he sanctioned the rebate claims amounting to Rs. 8,27,854/- to the Appellant. The Appellant then vide their letter dated 07.06.2013 staked claim for payment of interest on the delay in payment of the rebate amount. The Deputy Commissioner, Central Excise, Thane-I vide letter F.No. V/RC/KIII/Th-I/Angoor/Rebate/2011 dated 05.08.2013 informed the Appellants that the rebate claim was sanctioned in denova adjudication proceedings on 12.03.2013 and consequent to which the payment of rebate claim was made on 15.03.2013 and hence the interest clause is not applicable to it. Government observes that, aggrieved with the Order-in-Original dated 12.03.2013, the Appellant should have filed an appeal with Commissioner(Appeal) for payment of interest on the delay in payment of the rebate amount. However, the Appellant vide letter 07.06.2013 staked claims for payment of interest and the appeal was filed only on 14.02.2014 i.e. delay beyond 90 days.

7. From the plain reading of the provisions of Section 35 of the Central Excise Act, it is clear that an appeal should be filed within sixty days from the date of communication of the decision or order that is sought to be

challenged. However, in view of the proviso thereto, the Commissioner (Appeals) is empowered to allow the appeal to be presented within a further period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days. Thus, the Commissioner (Appeals) is empowered to extend the period for filing an appeal for a further period of thirty days and no more. Therefore, once there is a delay of more than ninety days in filing the appeal the Commissioner (Appeals) has no power or authority to permit the appeal to be presented beyond such period. This issue has been decided by the 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, 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 aforesaid 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."*

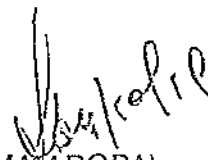
8. The above view is reiterated by the Supreme Court in Amchong Tea Estate v. Union of India, (2010) 15 SCC 139 = 2010 (257) E.L.T. 3 (S.C.) and Commissioner of Customs and Central Excise v. Hongo India Private Limited, (2009) 5 SCC 791 = 2009 (236) E.L.T. 417 (S.C.). In the light of the above settled legal position, the reference to and reliance placed by the applicant on various case laws in the Revision Application is misplaced and out of context.

9. As in the instant case the appeal has been filed with the Commissioner(Appeals) by the applicant after more than 90 days of receipt of the Order-in-Original dated 12.03.2013, the Government holds that the Commissioner (Appeals) has rightly rejected the appeal on the ground of limitation and there is no reason to interfere with the said order.

12. In view of position explained above, Government does not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same.

13. The revision application is dismissed being devoid of merit.

14. So, ordered.

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

ORDER No. 66 /2019-CX (WZ)/ASRA/Mumbai DATED 4.10.2019.

To,  
M/s Angoora International,  
53, 147/149 Gaiwadi Sadan,  
Dr. Viegas Streed, Kalbadevi,  
Mumbai 400 002.

Copy to:

1. The Commissioner (Appeals), GST & CX , Thane.
2. The Commissioner of GST & CX, Thane Rural,
3. The Deputy / Assistant Commissioner, GST & CX , Division V, Thane Rural.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file

⇒ spare copy.