

REGISTERED  
SPEED POST



F.No.195/215-216/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6 FLOOR, BHICAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....23/1/13

Order No. 67-68 /2013-Cx dated 23.01.2013 of the Government of India, passed By Shri D. P. Singh, Joint Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal No.02 & 03/2011-Cx dated 17.1.11 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore

Applicant : M/s Pricol Ltd. (Plant-I), Coimbatore

Respondent : Commissioner of Central Excise, Coimbatore

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ORDER

These revision applications are filed by the applicant M/s Pricol Ltd. (Plant-I), Coimbatore against orders-in-appeal No. 02 & 03/2011-Cx dated 17.1.11 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore with respect to order-in-original No. 178-179/2009 dated 12.11.09 passed by Deputy Commissioner of Central Excise, Coimbatore-I Division.

2. Briefly stated the facts of these cases are that the applicants are manufacturer and exporter of automotive instruments (Motor vehicle parts) and holders of Central Excise Registration Certificate No.AABCP2380CXM001. The applicants have filed a Rebate Claim for an amount of Rs.6,29,588/- with the Deputy Commissioner of Central Excise, Coimbatore-I Division on 17.8.2009 and another claim for an amount of Rs.49,056/- on 25.8.2009 claiming the Excise Duty paid on the said goods exported under Rule 18 of CER, 2002. The lower authority rejected both the rebate claims filed on 17.8.2009 and 25.8.2009, in respect of the ARE-1s 6786/29.8.2008 & 6756/25.8.2008 for non-filing of original & duplicate copies of ARE-1s and other documents within the prescribed time limit under Section 11(B)(5)(a)(i) of the Central Excise Act, 1944 vide order Sl.No.178&179/2009 dated 12.11.2009.

3. Being aggrieved by the said orders-in-original, applicant filed appeal before Commissioner (Appeals) on 11.6.2010 who dismissed the same as time barred in terms of Section 35 of Central Excise Act 1944.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The copy of the impugned order appears to have been handed over to an employee of the applicant, who is not an authorized representative of the applicant, when he went for filing some letters to the department.

The said employee has not properly handed over the copy of the order to any responsible person. Later, the applicant came to know that the orders have been passed and written to the Deputy Commissioner of Central Excise, Coimbatore I division to furnish copy of the orders, vide their letter dated 28.04.2010. In response to the same, the Deputy Commissioner of Central Excise, Coimbatore I Division, vide his letter dated 01.06.2010, received by the applicant on 11.06.2010, informed the applicant that the order copies have been handed over to one Shri Velumani, Employee of the applicant and enclosed the copies of the orders.

4.2 The said Shri Velumani is not at all an authorized representative of the applicant, for receipt of communications for Central Excise purposes. Attention is invited in this regard to the provisions of section 37 C of the Central Excise Act, 1944, which deals with service of orders etc. A perusal of the above provision would reveal that handing over the copy of the order to an employee of the applicant, who is not authorized for the purpose is not at all a valid service, as contemplated in Section 37 C *ibid*. Hence, the date of receipt of the order has to be taken as 11.06.2010, the date on which the copy of the order was served on the applicant under RPAD and received by the applicant. The applicant had filed the appeal on 22.6.2010, i.e, within sixty days from receipt of copy of Order-in-original. In view of the above it is submitted that the Orders in Original may be treated as served on applicant on 11.06.2010 and the appeal may be treated as filed in time before Hon'ble Commissioner (Appeals).

4.3 The learned Commissioner (Appeals) has relied on seal on copy of Orders in Original and dispatch details as available with Department to conclude that the applicant had received the Orders in Original on 12.11.2009 itself. It is submitted in this regard the seal without any

signature may not be treated as conclusive proof of service of order on applicant. Since it is admitted even by the department and affirmed by Hon'ble Commissioner (Appeals) that orders-in-original were served on Velumani, who is not an authorized employee there is no room for any further assumption that Order has been appropriately served on applicant.

4.4 Applicant is entitled for rebate of duty paid on export of goods. With regard to the rejection of the rebate claim on the ground that Original and Duplicate copies of the ARE1s have not been furnished by the applicant, the applicant wish to state that the said documents have been misplaced by their clearing agents. The applicant is regularly exporting the goods and in the volume of transactions, on certain occasions such documents are lost. But, the fact of export of goods by the applicant stand proved by various other documentary evidences.

Case Laws relied upon by the applicants are:

- Sunny Textiles Vs CCE – 2009 (247)ELT 304
- J.K. Oil Industries Vs CCE - 2009 (243) ELT 624
- Axles India Limited Vs CCE - 2009 (241) ELT 121.
- Matigara Rolling Mills (P) Ltd Vs. CCE 2007 7 STR 363 Cal
- Hindustan Lever Limited vs. CCE 2008 8 STR 308
- Yarnar Packs vs. Commr. Of Customs 2007 219 ELT 343 (Tri-Bang)
- In Re: Hebenkraft – 2001 (136) ELT 979 GOI
- In Re: CCE Bhopal – 2006 (205) ELT 1093 GOI, etc.

5. Personal hearing was scheduled in this case on 13.12.12. Shri A.P.Ravi, Advocate appeared on behalf of the applicants who reiterated the grounds of revision applications.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of records Government observes that the rebate claim filed by the applicant for duty paid on exported goods was denied on the grounds that

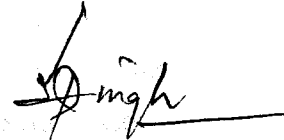
they had failed to file the rebate claim within the prescribed time limit and did not file the original and duplicate copies of ARE-1. In appeal procedure Commissioner (Appeals) with due discussion found that the appeal was filed beyond the time limit prescribed under Section 35 of Central Excise Act 1944 including the condonation period, hence, he accordingly dismissed the same as time barred. Now the applicants have filed these Revision Applications on the grounds stated at para 4 above.

8. The basic contention of the applicants is that handing over the copy of the order to an employee of the applicant, who is not authorized for the purpose, is not at all a valid service for the purpose of computation of date of service of order in original. Government however notes that such receipt of the impugned order-in-original dated 12 November 2009 is not denied by the applicants. It is further not the case that receipt of the said order on 12 November 2009 is bogus/false. It is also surprising that how such authorized seal is obtained by an employee of the applicant and order so received by him is not given to the responsible person. Government further notes that Commissioner (Appeals) has categorically noticed in both the cases that "the self-attested copies of the orders-in-original i.e. impugned orders both dated 12.11.2009, an inward receipt seal of the appellants company containing details "pricol – CET Plant-I – 12 Nov 2009-received is found." It is further corroborated by the fact that the office copy of the impugned orders-in-original contain the dispatcher seal of the office with date of dispatches as 12.11.09 as well as signature of Shri V.Velumani of Pricol for having received their copy of the same. It is thus clear that the orders were dispatched on 12.11.09 which was received by Shri V.Velumani viz. Pricol on the same day which is further evident from copy of the impugned orders filed along with the appeal papers before Commissioner (Appeals) as they bore the seal of M/s Pricol showing the receipt date as 12 November 2009.

9. In view of above circumstances it cannot be said that the impugned orders-in-original were not served on the applicants on 12 November 2009. Only this date is relevant for considering the limitation period. As per provision of

Section 35 B of Central Excise Act 1944 Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in Section 35 B of Central Excise Act 1944 to condone delay exceeding 30 days. Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. Vs CESTAT New Delhi 2004(69) ELT 258 (All) has held that the Commissioner (Appeals) cannot condone delay in filing appeal beyond 30 days. Government also notes that Hon'ble Supreme Court in the case of Singh Enterprises Vs CCE Jamshedpur 2008 (221) ELT 163(SC) has also held that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. In a recent judgement in the case of Raj Chemicals Vs UOI 2013 (287) ELT 145, Hon'ble High Court of Bombay has also held that Commissioner (Appeals) can condone delay upto 30 days in filing appeal. Appeal filed after said period being time barred is not maintainable. In view of said position, Government holds that Commissioner (Appeals) has rightly rejected the appeal as time barred without going into the merits of case. In such a situation revision application under Section 35EE cannot be entertained on merit and is liable to be rejected as non-maintainable.

10. The Revision applications are thus rejected.
11. So ordered.

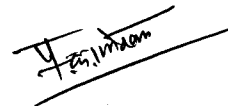


(D P Singh)

Joint Secretary (Revision Application)

M/s Pricol Ltd (Plant-I)  
Perianaickenpalayam  
Coimbatore

*Attested*



**K. RAMESHWAR**  
विशेष कार्य अधिकारी / OSD-II (RA)  
वित्त मंत्रालय, (समाख्य विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

GOI Order No. 67-68 /13-CX dated 23.01.2013

Copy to:

1. The Commissioner of Central Excise, 6/7, ATD Street, Race Course Road, Coimbatore-641 018.
2. Commissioner of Customs, Central Excise & Service Tax (Appeals) 6/7, ATD Street, Race Course Road, Coimbatore- 641 018.
3. The Deputy Commissioner of Central Excise, Coimbatore Division, 1237, Elgi Building, Trichy Road, Coimbatore-641 018, Tamilnadu.
4. Shri A.P.Ravi, Advocate, C/o Swamy Associates, 502 Presidium Woodsvale, Bharati Park, 1<sup>st</sup> Cross, Saibaba Colony, Coimbatore
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



(P.K.Rameshwaram)  
OSD (Revision Application)



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