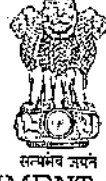


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/207/17-RA / 1179 Date of issue: 23.02.23

ORDER NO. 67 /2023-CX (WZ)/ASRA/MUMBAI DATED 22.02.2023
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.

Applicant : M/s. Shubhada Polymers Products Pvt. Ltd.

Respondent : Pr. Commissioner of CGST, Mumbai East.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
PK/51/M-II/2017 dated 22.02.2017 passed by
Commissioner (Appeals-II), Central Excise, Mumbai Zone-II.

ORDER

This Revision Application is filed by M/s. Shubhada Polymers Products Pvt. Ltd., CTS No. 111, Opp. L&T Gate No.5, Saki Vihar Road, Powai, Mumbai – 400 072 (hereinafter referred to as “the Applicant”) against Order-in-Appeal (OIA) No. PK/51/M-II/2017 dated 22.02.2017 passed by Commissioner (Appeals-II), Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the applicant had filed a rebate claim in respect of excisable goods exported vide 10 ARE-1s. The rebate sanctioning authority sanctioned the rebate claims partially on the grounds that dates in some of the ARE-1s do not match with dates in the corresponding Excise invoices, vide following Order-in-Original (OIO):

OIO No. & date	(Amt. in Rs.)	
	Amount claimed	Amount rejected
MKM/Rebate/181/Powai/Shubhada/14-15 dated 26.08.2015	4,75,456/-	2,93,252/-

Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal on the ground that the appeal is hit by provisions of time bar.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

- i) the Ld. Commissioner has erred in law in passing the impugned order without taking in to consideration the merits of the case and without giving any finding on the various valid submissions made by them.
- ii) the Commissioner appeal has rejected rebate claim on the grounds of limitation. The applicant contends that they filed the appeal on basis of Certified copy as they did not receive original copy of order.
- iii) On being called by the Commissioner for confirmation of date of service of Order, concerned divisional Assistant Commissioner vide his letter dated 01.02.2017 informed that as per their office records the impugned Order dated 26.08.2015 was outwarded on the same date, however no formal acknowledgement was on records. The Assistant Commissioner relied on the letter written by the applicant

wherein they requested copy of the impugned order as they could not find the same on the record as other orders were misplaced/lost. The Assistant Commissioner did not state the manner in which the order was served nor he could produce a proper/positive evidence of the order being served or could produce acknowledgement card of registered post, but just presumed that the applicant must have received their copy in time.

- iv) But unfortunately, the Commissioner Appeal failed to take note of the fact that no formal acknowledgement was on records as stated by Assistant Commissioner in letter dated 01.02.2017.

In this regard we rely upon the judgment of Honorable Madras High Court published in STR (51) Page. 127 (Mad.) in the matter of OSA SHIPPING PVT. LTD. versus Commissioner of Central Excise, Chennai wherein it states that the service of Order is not complete when acknowledgement not produced - Section 37C of Central Excise Act, 1944.

- v) there is no finding by the Assistant Commissioner nor by Commissioner Appeals that the goods were not exported out of India. The point on which the claim was rejected by the Assistant Commissioner was on account of printing error in date due to which there was a mismatch of dated in the AREI and corresponding Excise Invoice. It is well settled law that the export could be established from other documentary evidences. All documents submitted by the claimant showing the Description, Quantity of Goods, gross weight, net weight, total value of goods tally with all other export documents. Further the foreign exchange has also been realized. Therefore appellant has fulfilled substantial requirement of law, thus the rebate cannot be denied for minor procedural infraction.

The applicant therefore prayed for setting aside the impugned order with consequential relief.

4. Several personal hearing opportunities were given to the applicant viz. on 04.10.2022, 18.10.2022, 07.12.2022 and 21.12.2022. However, the applicant did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been given, the matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application filed by the applicant.

6. Government notes that the issue to be decided in this case is whether the appeal filed by the applicant under Section 35 of Central Excise Act, 1944 was time barred?

7. Government finds that the applicant had filed an appeal against the impugned OIO dated 26.08.2015 on 28.07.2016 contending that they had not received original copy of the order and only after their request dated 08.07.2016, the department had issued the certified copy of the order on 22.07.2016, on the basis of which they had filed the appeal. However, the Appellate authority, after verifying with the department, came to the conclusion that the applicant's contention regarding non-receipt of original copy of impugned OIO was fallacious. The relevant para 7.1 of the impugned OIA is reproduced hereunder:

7.1. In the instant case, it is an admitted fact that the appellants were in receipt of the copy of impugned order which is admittedly misplaced/ lost by them, this fact is evident from the appellant's letter dated 08.07.2016 and also confirmed by the concerned divisional Assistant Commissioner vide his letter dated 01.02.2017 mentioned above and the appellant had contended before me that they had not received the original copy of the impugned order. On perusal of the records, it is observed that the appellants vide their letter dated 08.07.2016 requested the range superintendent to issue certified copy of the orders for their record, on the grounds that they had lost/ misplaced the orders already received by them.

The range superintendent, by considering their request, provided them the attested copy of the impugned order on 19.07.2016, on the basis of which the appellants have filed subject appeal by claiming that the appeal has been filed within time limit. In view of this, when admittedly the appellants had lost/ misplaced the order, their contention made during personal hearing that they had not received the original copy of order is not correct and fallacious and hence not tenable. Accordingly, I hold that the appellant should have filed the appeal against the copy received by them initially and not on the basis of certified copy requested for and obtained from the range Office for record purpose. In view of the legal provisions cited above, I hold that there is delay in filing of the appeal by the appellant which is beyond the power of condonation of the Commissioner (Appeals).

8. Government further observes that vide impugned OIO an amount of Rs. 1,80,509/- towards cash rebate was sanctioned to the applicant, which they have not denied having received in time. Further, an amount of Rs.1695/- was allowed as credit in CENVAT register in the said OIO. The applicant has not asserted any delay in taking the said credit in their books. Government notes that the applicant couldn't have passed the credit entry without mentioning the particulars of the impugned OIO in their CENVAT register. Hence, Government agrees with the aforementioned conclusion of the Appellate authority.

9. Government observes that as per Section 35 of the Central Excise Act, 1944, an appeal to Commissioner of Central Excise (Appeals) is to be filed within sixty days of communication of an OIO. An extension of another thirty days can be allowed by the Commissioner (Appeals). Thus, a maximum period of ninety days from the date of communication of OIO is allowed by the Act (supra) for filing an appeal against an OIO. However, in the instant case, the said time limit of ninety days has been exceeded in filing the appeals. It has been held in plethora of judgments that the department is a creature of the statute and cannot go beyond the powers

granted under the statute. Therefore, the appellate authority has rightly held the appeal as hit by provisions of time bar.

10. In view of the above discussions, Government upholds the Order-in-Appeal No. PK/51/M-II/2017 dated 22.02.2017 passed by Commissioner (Appeals-II), Central Excise, Mumbai Zone-II and rejects the impugned revision application filed by the applicant.

Shrawan
22/2/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. *67* /2023-CX (WZ)/ASRA/Mumbai dated *22.02.23*

To,
M/s. Shubhada Polymers Products Pvt. Ltd.,
CTS No. 111, Opp. L&T Gate No.5,
Saki Vihar Road, Powai, Mumbai – 400 072.

Copy to:

1. Pr. Commissioner of CGST, Mumbai East,
9th Floor, Lotus Info Centre,
Parel (East), Mumbai – 400 012.

2. ~~Sy. P.S. to AS (RA), Mumbai~~
3. Guard file
4. Notice Board.