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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

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F. No. 195/122(I to III)/17-RA /1163 Date of issue: 23.02.23

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ORDER NO. 68-70/2023-CX (WZ)/ASRA/MUMBAI DATED 23.02.2023  
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 Orders-in-Appeal No.  
PK/98 to 100/M-II/2016 dated 26.10.2016 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/98 to 100/M-II/2016 dated 26.10.2016 passed by Commissioner (Appeals-II), Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the applicant had filed three rebate claims in respect of excisable goods exported vide various 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 Orders-in-Original (OIO):

OIO No. & date	(Amt. in Rs.)	
	Amount claimed	Amount rejected
167/15 -16 dated 04.08.2015	22,03,109/-	2,25,508/-
MKM/Rebate/124/Powai/Shubhada/14-15 dated 08.09.2015	15,93,309/-	6,53,548/-
MKM/Rebate/123/Powai/Shubhada/15-16 dated 28.08.2015	15,64,427/-	2,51,928/-

Aggrieved, the applicant filed appeals against the above mentioned 3 Orders-in-Original which were rejected by the Commissioner (Appeals) vide impugned Orders-in-Appeal on the ground that the appeals are 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 rebate claim could not be filed in time as the employee who was responsible for export/rebate work forgot to collect them from the excise office and later totally forgot about the same and remember only when the accounts department questioned about same.
- iii) the delay in filing the appeal is a procedural lapse and same may be condoned as substantial benefit cannot be denied to them due to procedural infractions.

iv) 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 Orders-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 the Central Excise Act, 1944 was time barred?

7. Government finds that the applicant had filed 3 appeals against the OIOs dated 04.08.2015, 28.08.2015 and 08.09.2015 on 14.07.2016. These OIOs were received by the applicant on 12.08.2015, 07.09.2015 and 14.09.2015 respectively. 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, including those relied upon in the impugned OIA, 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 appeals as hit by provisions of time bar.

8. In view of the above discussions, Government upholds the Orders-in-Appeal No. PK/98 to 100/M-II/2016 dated 26.10.2016 passed by Commissioner (Appeals-II), Central Excise, Mumbai Zone-II and rejects the impugned revision application filed by the applicant.

  
(SHRAWAN KUMAR)

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

ORDER No. 68-70 /2023-CX (WZ)/ASRA/Mumbai dated 22.02.2023

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,  
9<sup>th</sup> Floor, Lotus Info Centre,  
Parel (East), Mumbai - 400 012.

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