



**REGISTERED  
SPEED POST**

**F.No. 198/148/10-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...6-1-14.....

ORDER NO. 08/14-Cx DATED 03.01.2014 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 the order-in-appeal  
No.YDB/22/RGD/2010 dated 13.10.10 passed by the  
Commissioner of Central Excise (Appeals), Mumbai  
Zone-II

Applicant : Commissioner of Central Excise, Raigad

Respondent : M/s Rekha Copper & Copper Alloy Pvt. Ltd., Baroda

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**ORDER**

These revision applications are filed by the Commissioner of Central Excise, Raigad, against the order-in-appeal YDB/22/RGD/2010 dated 13.10.10 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai with respect to order-in-original passed by the Assistant Commissioner of Central Excise (Rebate), Raigad. M/s Rekha Copper & Copper Alloy Pvt. Ltd., Baroda is the respondent in this case.

2. Brief facts of the case are that M/s Rekha Copper & Copper Alloy Pvt. Ltd., Baroda have filed a rebate claim under Rule 18 of the Central Excise Rules. During the processing/scrutiny of the rebate claim, it was interalia noticed that the actual quantity exported did not tally with the shipping bill, bill of lading and excise invoices and that the duplicate copy of excise invoice was not submitted. Accordingly, Deficiency Memo-cum-Show Cause Notice was issued to the respondent. The Assistant Commissioner (Rebate), Raigad considering the written submission filed by the claimant, rejected both the rebate claims filed by the respondent vide the impugned order-in-original on the grounds that the actual quantity which was exported was not tallying with the Shipping Bill, Bill of Lading and Central Excise Invoice, the duplicate copy of excise invoice was not submitted with the rebate claim; details of ARE 1 were not shown on the Shipping Bill; the quantity of goods was shown as 5895 kgs in the ARE 1 No 66/05-06 and the Central Excise invoice No.96 both dated 13.02.2006 whereas quantity of 8448 kgs net was shown in the Shipping Bill, Bill of Lading and Mate receipt; the weight was shown as 5760 kgs net in the commercial invoice cum packing list and hence it was not clear to which goods were exported by the claimants since the weight and description differed on every document; the description of the exempted goods did not appear in the commercial invoice and hence that the exempted goods have also been exported, is not established.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals) who decided the same in favour of the respondents.

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

4.1 Commissioner (Appeals) has erred in not appreciating that order-in-original was sent by Speed Post on 12.03.2008 and the receipt given by the Panvel Post office showing the date as 12.03.2008 is also on record. In the absence of any remarks from the post authorities to the effect that the service of the letter/order was delayed, it could be safely assumed that the order was received within the ordinary time period of two days. Commissioner (Appeals) has erred in not appreciating that the claimant had themselves in the appeal filed in Form EA-1 submitted the date of receipt of order as 14.03.2008. This is further substantiated by the fact that the claimant had originally filed an application for the condonation of delay of 45 days in filing of the appeal wherein it was very specifically provided that they had received the order in original on 14.03.2008. The appeal and the condonation were duly signed by the director and the company seal was affixed on the body of the appeal. Hence, it has been categorically submitted by the assessee that the order-in-original was received by them on 14.03.2008. The preponderance of evidence clearly seems to indicate that the assessee had received the order-in-original on 14.03.2008 and have retracted the submission only to gain undue advantage in the instant case. Commissioner (Appeals), Central Excise, Mumbai-Zone-II has erred in condoning the delay of 45 days in filing of the appeal. The discussions above clearly indicate that there was a delay in 45 days in filing of the appeal. The assessee themselves had filed an application for condonation of delay of 45 days. The

Commissioner (Appeals) is empowered to condone the delay upto 30 days and has no power to condone any delay above 30 days.

4.2 Commissioner (Appeals) has erred in holding that the commercial invoice No. 826 dated 08.02.2006 showed the description as brass electrical switching parts and screws separately and hence the conclusion of the adjudicating authority that the genuineness of the export was not established was not correct. On perusal of the commercial invoice it is seen that the net weight of the brass terminal is shown as 5760 kgs which does not tally with the net weight shown as 5895 kgs in the ARE-1 No. 66/05-06 and the Central Excise invoice No. 96 both dated 13.02.2006. In the absence of any reason for the deviation given by the assessee, it is not possible to co-relate the exported goods with the duty paying document. The Commissioner (Appeals) has therefore erred in holding that conclusion of the adjudicating authority that the genuineness of the export was not established, was not correct. Commissioner (Appeals) has erred in not following the ratio of the judgment in the case of S.A. Plywood Industries v/s CCE, Siguri as reported in 2008(230) ELT 329 (Tri-Kol) wherein it is provided that the service through speed post and when same not returned back by postal authorities with any remark-Requirement of Section 37C (2) of the Central Excise Act, 1944 fulfilled - Order/Notice deemed to have been served on the person intended.

5. A show cause notice was issued to the respondents under Section 35EE of the Central Excise Act 1944 to file counter reply. The respondents vide their written submission dated 13.5.2010 mainly stated as under:

5.1 Cross objectionist submit that under Section 35C (1)(a), the service of the order is has to be made by "register post with acknowledgement due" to a person for whom it is intended. Sending the order by mere "registered post" is not the compliance of the said condition. In the taxing matters like customs and

central excise, there would be no scope for the presumption, as it would deprive the right of the assessee to agitate the matter. Therefore cross objectionist submit that the revenue has failed to produce any proof of service though three months time was granted to them by the Commissioner (Appeals) for the same. In the absence of the said proof, Commissioner (A) was legally right to decide the appeal condoning the delay of 24 days, Hence the order of Commissioner (A) is legal & proper, not required to be set aside on any of the grounds of the revenue's application.

5.2 Cross objectionist further submit that it is settled law by the large bench of the tribunal in the case of Marga Industires Ltd V/s CC, New Delhi-2006(202) ELT 244(T-LB) that the "despatch of adjudication order by speed post/registered post would not amount to a valid service in the absence of proof of actual delivery of speed post". This judgement was specifically answered the question framed under reference and the reference was answered by the three member bench of tribunal on 10.7.2006. In view of the said settled law, the case laws cited by revenue is not applicable and the grounds such as the 'presumption of receipt' or the 'onus on the recipient to prove, all are legally not sustainable. Therefore the revenue's application is required to be dismissed as devoid of any merits.

5.3 Cross objectionist further submit that as regards the difference in qty, that out of 11 items covered in the said goods only 3 items are under 'Claim of rebate', the qty of goods was 5895 kgs. The total qty of goods exported is 8448.710 kgs. This gross weight was evident from the shipping bill, mate receipt, bill of lading. ARE-1 quantity cannot be compared with the shipping bill quantity as the rebate claim was for lesser quantity only. Respondents submit that the goods were exported per SCI, Mahima on 4.3.2006 as seen from the endorsement of customs officer on the reverse of the said ARE-1. The endorsement also shows the M.R. No.44510 dated 4.3.2006. Therefore, it was

undisputed that the goods covered in the ARE-1 No. 66/05-06 dated 13.2.2006 was exported.

6. Personal hearing in the case was held on 26.11.13. Shri Ajudia Jayeshkumar, Director of the company appeared for hearing on behalf of the respondent and stated that order-in-appeal being legal and proper, may be upheld. Nobody attended hearing on behalf of applicant department.

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

8. Government observes that the original authority rejected the rebate claim of the respondent mainly on the ground that there is difference in weight of goods as per ARE-1/Invoice and Shipping Bill/Bill of Lading. Hence, correlation of goods covered in excise documents and export documents could not be established. Commissioner (Appeals) decided the case in favour of respondents by holding that the respondents claimed the rebate of goods exported having weight as mentioned in ARE-1 and genuineness of such export is proved. Now, the applicant department has filed this revision application on grounds mentioned in para (4) above.

9. Government observes that the appellate authority condoned the delay of 45 days, which is beyond his statutory limit of condonation of delay of 30 days in filing appeal before him. The appellate authority observed that impugned order-in-original was received by respondents on 7.4.2008 and the appeal was filed before him on 1.7.2008. As such there was delay of only 24 days in filing appeal. The appellate authority also observed that the department could not submit any proof of service of impugned order-in-original to support their claim that impugned order-in-original was received by respondent much prior to 7.4.2008. Government notes that department has pointed out that said order-in-original was sent by speed post on 12.3.08 and Panvel Post Office has issued

receipt on 12.3.08. The respondent in their appeal in form EA-I has stated the date of receipt as 14.3.08 and requested to condone the delay of 45 days. These vital facts are ignored by Commissioner (Appeals). The respondent has also not successfully rebutted this factual position, as they have <sup>not</sup> mentioned anything about said facts. Therefore, Government finds that the appeal was filed after a delay of 45 days before Commissioner (Appeals).

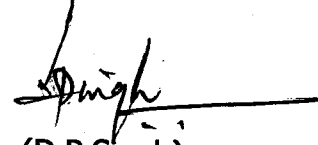
10. Government notes that appeal was filed before Commissioner (Appeals) after a delay of 45 days and the said fact is not disputed by applicant. As per provisions of section 35B of Central Excise Act, 1944, Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in section 35B ibid 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 (169) ELT 258 (All) has held that the Commissioner (Appeals) cannot condone delay in filing appeals 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.

11. In view of above position appeal filed after a delay of 45 days was not maintainable and liable to be dismissed as time barred. Commissioner (Appeals) has erred in condoning the said delay exceeding 30 days.

12. In view of above circumstances, Government sets aside the impugned order-in-appeal and allows the revision application on the ground of appeal being time barred without going into merits of the case. The impugned order-in-original is therefore restored.


13. The revision application succeeds in terms of above.

14. So, ordered.

  
(D.P.Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise, Customs & Service Tax,  
Raigad Commissionerate, 4<sup>th</sup> Floor,  
Kendriya Utpad Shulk Bhawan,  
Sector 17, Plot No.1, Khandeshwar,  
Navi Mumbai – 410 206

Attended'  
  
3/1/2014

(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

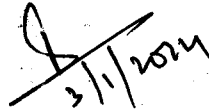


Order No. 08/2014-Cx dated 03.01.2014

Copy to:

1. M/s Rekha Copper & Copper Alloy Pvt. Ltd., 11/E, Megha Park, On Harinagar Water Tank Road, Baroda-390015
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot No. 1, Khandeshwar, New Panvel – 410 206.
4. PA to JS (RA)
5. Guard File
6. Spare copy

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)

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