

REGISTERED
SPEED POST



F.No. 195/581/12-RA (CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue.....18/9/15

Order No. 81/2015-CX dated 17.09.2015 of the Government of India, passed by Ms Rimjhim Prasad, 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.P-III/RS/69/2012 dated 13.03.2012 passed by Commissioner of Central Excise (Appeals-III), Pune.

Applicant : M/s. Spectra Specialities, Pune.

Respondent : Commissioner of Central Excise, Pune – III.

ORDER

This revision application is filed by M/s Spectra Specialties, Pune against Order-in-Appeal No. P-III/RS/69/2012 dated 13.3.12 passed by the Commissioner of Central Excise (Appeals), Pune-III with respect to Order-In-Original passed by the Deputy Commissioner of Central Excise, Pune-VI Division.

2. Brief facts of the case are that the applicants are engaged in the manufacture of OSSA has filed the rebate claim for an amount of Rs.38,429/- in respect of duty paid on the goods manufactured and cleared for exports by them under Rule 18 of the Central Excise Rules, 2002 read with Section 11 B of the Central Excise Act 1944. The goods have been exported without payment of duty under UT-1 vide ARE.1s. On verification of the said claim, it was noticed that the applicant had paid the Central Excise duty in June 2011 which is paid after the exports and the said payment is reflected in the ER 1 return for the month of August-2011. Therefore, a Show Cause Notice dated 14.11.2011 was issued for non-fulfillment of the conditions of Notification No.19/2004-CE(NT) dated 06.09.2004 and subsequently, rebate was rejected on aforesaid ground.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal as time barred. Commissioner (Appeals) held that the appeal was filed after initial stipulated period of 60 days as provided under Section 35 of the Central Excise Act, 1944 and the applicant failed to offer sufficient reasons preventing them from filing appeal before him within said stipulated 60 days period.

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

4.1 During the period of January and February, 2012, there was slowdown in the Company. Due to labour problem, routine work was hampered and management was stuck with dealing with labour problems. Also, due to continuous labour problems, there was a pressure for completing the commitments given to customers and the owner and other staff had to visit the customers, lawyers, job workers etc. The total administrative staff was involved in the production activities only. In these circumstances, the applicants could not file the appeal within the stipulated time period. Therefore, the applicants filed application for condonation of delay and also explained the situation to the Commissioner (Appeals) at the time of personal hearing. Affidavit towards slowdown is also enclosed. In view of the same, application for condonation of delay should not have been rejected by the Commissioner (Appeals). Reliance is placed on the following judicial pronouncements in his regard:

- S.P Worsted Spinning Mills vs. CCE, Chandigarh-II 2001(127)ELT 577(Tri.);
- Trend Shoes Pvt. Ltd. vs. CCE, Jaipur 2001(127)ELT606(Tri.-Del)

4.2 The original authority violated the principal of natural justice in as much as sufficient opportunity of hearing was not provided to them.

4.3 The applicant submits that as regards the findings of the adjudication authority that the export should be made after payment of duty which the claimant has not fulfilled and that the export was undertaken without payment of duty under UT-1, the applicants wish to submit that the applicants submitted UT-1 on 12th April 2011 however, no action was taken on it by the concerned Excise Officer. The applicants exported the goods on 26th April 2011, 29th April 2011 and 1st June 2011 i.e. after submitting UT-1. No action was taken by the concerned officer on the application. After repetitive follow-up, the applicants were directed to pay duty along with interest, on the goods exported. As directed by the concerned officer, the applicants paid the duty on the goods exported and informed the department on 27th June 2011 and once again requested to accept the UT. The above mentioned facts clearly establish that the applicant had neither contravened any excise provision, nor they had intention to *evade* any government dues. Even though the delay in accepting UT-1 was not fully due to mistake on the part of the applicants, for applying for extension of UT-1. In any case, the goods were exported and proof of export was submitted to the department. Therefore assuming but without admitting, it is submitted that the delay in applying for extension of UT-1 needs to be treated as a procedural lapse.

4.4 It is further submitted that no duty payment was shown against export in ER 1 as the duty on the same was paid subsequently after submission of the ER.1. ER.1 is also showing duty payment of the month June, 2011 in the month of August 2011 and not mentioning about the export under claim of rebate on the export document is merely a procedural lapse which was due to the facts explained above. It is further submitted that delay in payment of duty cannot be a reason for rejection of rebate claim. In series of decisions, it has been held that substantial benefit cannot be denied for technical lapses. The applicants wish to state that the fact remains that export has taken place on payment of duty. The applicants wish to place reliance on decision in the case of Saket Industries Ltd. 2011 (268) ELT 125 (GOI) wherein it has been held that as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, Circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.

5. Personal hearing was scheduled in this case on 8.4.15 & 13.5.15. Nobody attended the hearing. The applicant vide their letter dated 20.4.15 & 5.5.15 requested to decide the case on merit. Nobody attended hearing on behalf of the department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the rebate claim was rejected by the original authority on the ground that the payment of duty was done subsequent to export of goods and as such condition of the Notification No.19/2004-C.E.(NT) dated 06.09.2004 has been violated. Commissioner (Appeals) rejected the appeal as time barred as the appeal was filed after initial stipulated 60 days period and sufficient material justifying reason for filing appeal beyond stipulated period has not been provided. Now, the applicant has filed this Revision Application on grounds mentioned in para 4 above.

8. Government notes that the time limit of filing appeal before Commissioner (Appeals) has been provided under Section 35 of Central Excise Act, 1944. The said Section 35 reads as under:

(I) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a (Principal Commissioner of Central Excise or Commissioner of Central Excise), may appeal to the [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the Commissioner (Appeals)] [within sixty days] from the date of the date of the communication to him of such decision or order:

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(IA)] The Commissioner(Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(II) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

8.1 From the perusal of above said provision, it is clear that the appeal is initially required to be filed within initial stipulated 60 days. A further period of 30 days beyond initial 60 days period has been provided subject to the condition that the sufficient cause has been shown to the satisfaction of the Commissioner (Appeals) that the applicant has been prevented from filing the appeal within aforesaid 60 period.

9. Government notes that in this case, the applicant has merely cited the reason of labour unrest during the period 02.02.2012 to 14.02.2012 as reason for delay, however, they could not substantiate with any material evidence that there was a strike during the said period. Neither have they given any reason as to why no effort was made to file

appeal before Commissioner (Appeals) before start of strike especially in view of the undisputed fact that the appeal was signed on 30.01.2012 and strike is claimed to have begun only on 02.02.2012. Further, along with papers of Revision Application, the applicant has also submitted an affidavit dated 28.05.2012 to the effect that there was labour unrest during the period 20.12.2011 to 28.02.2012 on account of in their factory. However, on perusal of para 4 of the impugned Order-in-Appeal, it has been noticed that the applicant submitted before Commissioner (Appeals) that there was labour unrest between 02.02.2012 to 14.02.2012. Therefore, there is factual contradiction in period of unrest mentioned in affidavit dated 28.05.2012 and para 4 of impugned Order-in-Appeal. The Government hence finds that the applicant could not provide any substantial reason to justify the delay in filing of appeal before Commissioner (Appeals) within a further period of 30 days.


10. In view of the above discussion, Government finds no reason to intervene with the impugned Order-in-Appeal and upholds the same.
11. Revision Application is disposed off in above terms.
12. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

- (1) M/s Spectra Specialities,
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Tal: Mulshi
Pune - 411 044.
- (2) Mr. Sanjay R. Bhargave,
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3, Khushbu Apartments,
Off. Paud Road, Bhusari Colony (L)
Kothrud
Pune - 411 038.

Attested,


(B.P. Sharma)

(निदेशक) (रा.स.स.)
सहायक सचिव (रा.स.स.)
CBEC/O-05 (Revision A)
निदेशक (रा.स.स.)
Ministry of Finance (Govt. of India)
New Delhi

GOI Order No. 81/2015-CX dated 17.09.2015

Copy to:

1. Commissioner of Central Excise & Customs, Pune – III Commissionerate, "ICE House", 41-A, Sassoon Road, Pune – 411 001.
2. Commissioner of Central Excise (Appeals), Pune-III Commissionerate, "ICE House", 41-A, Sassoon Road, Pune – 411 001.
3. The Deputy Commissioner of Central Excise, Pune – VI Division, "ICE House", 41-A, Sassoon Road, Pune – 411 001.
- ✓ 4. PA to JS (RA).
5. Guard File.
6. Spare Copy.

Attested.



(B.P. Sharma)
(OSD (RA))
सहायक अधीक्षक (राजस्व विभाग)
C.B.L. OSD (Revision Application)
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