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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/350-351/15-RA 7060 Date of Issue:

ORDER NO. 849-850 /2021-CX (SZ)/ASRA/MUMBAI DATED 03.12.2021 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. Yazaki Wiring Technologies India (P) Ltd.

Respondent: Commissioner of GST and Central Excise, Chennai-Outer Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 145 & 146/2015 dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals-I) Chennai.

ORDER

Two Revision Applications are filed by M/s. Yazaki Wiring Technologies India (P) Ltd., D-7, Industrial Estate, Maraimalai Nagar - 603209, (hereinafter referred to as "the Applicant") against the Order-in-Appeal passed by the Commissioner of Central Excise (Appeals-I) Chennai as detailed hereunder:

Revision Application No.	Order-in-Appeal No./date	Order-in-Original No./date	Rebate Rejected
195/350-351/15-RA	145 & 146/2015 dated 26.06.2015	01/2014 dated 10.01.2014	Rs. 5,90,237/-
		02/2014 dated 10.01.2014	Rs. 7,34,465/-

2. Brief facts of the case are that the Applicant are registered manufacturers of Wiring Harness and parts falling under heading 85443000 of Central Excise Tariff Act, 1985. The applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for the amounts mentioned in the above table.

2.1 The rebate sanctioning authority observed that the applicant had procured input goods and had availed the CENVAT credit on the same. After availment of 100% CENVAT credit on the input goods, the applicant had exported the same without being put into usage in the manufacture of final products. As per the provisions of Rule 3(5) of the CENVAT credit Rules, 2004 relating to removal of inputs/capital goods 'as such' CENVAT credit may be utilized for "payment of amount equal to CENVAT Credit" taken on inputs or capital goods. Such reversal does not constitute duty payment and is merely a reversal of the credit taken on the input goods. The rebate sanctioning authority therefore rejected the rebate claims.

2.2 Aggrieved by the aforementioned Orders-in-Original rejecting the rebate claims, the applicant preferred appeals along with a petition for condonation of delay of 21 days in filing the appeals before Commissioner of Central Excise (Appeals-I), Chennai, who vide Orders-in-Appeal No.145 & 146/2015 dated 26.06.2015 rejected the appeals as time barred without going into the merits of the case, observing that the delay in filing appeals cannot be ignored and condonation of delay cannot be expected as a matter of right.

3. Accordingly, the Applicant filed the impugned Revision Applications on the following grounds:

i. The impugned order of the lower appellate authority rejecting the appeal filed by the applicants as time barred without exercising his power to condone the delay of 21 days in filing appeal is not sustainable and thus liable to be set aside.

ii. The applicant wishes to submit that they had forwarded the Order in Original No. 01/2014 (R) dated 10.01.2014 received by them on 30.01.2014 to their counsel for filing appeal before the Hon'ble Commissioner (Appeals), Chennai. However, the order was misplaced in their counsel's office, which caused the delay of 21 days in filing the appeal. In this regard, the applicant wishes to submit that the delay in filing the appeal was not due to the misplacement of order in the counsel's office and not because of the fault on the part of applicant. In this connection, the applicant wishes to place reliance on the following decisions, wherein it has been held that, when the Advocate has taken the responsibility of not filing the appeal in time, then it is a settled law that due to inaction of the Counsel/Advocate, the applicants should not be put to disadvantageous situation. The cases are:

a) C.D. Steel (P) Ltd vs. CCE, cal - 11 - 2003 (156) E.L.T. 931 (Tri. - Kolkata);
b) Shree Sagar Stevedores Vs. CCE, Bhavnagar - 2009 (237) E.L.T. 101 (Tri. - Ahmd.);
c) Indam Recycling Co. Pvt. Ltd Vs. CC, Cochin - 2009 (246) E.L.T. 687 (Tri. - Bang.); and

d) Sun Pharmaceuticals Industries Ltd Vs. CCE & ST, Vadodara - 2015 (316) E.L.T. 286 (Tri. -Ahmd.)

iii. In view of the above, the applicant wishes to submit that the order of the lower authority in rejecting the appeal filed by them as time barred is not sustainable.

iv. Further, the applicant also wishes to contest the findings of the lower authority who has dismissed the appeal, on the basis of the observation that the reason for the delay in filing the appeal stated by the applicant is not satisfactory and the timely action is the essence of day to day activities of human being - a farmer not sowing his fields in time after the rains has to suffer. It was also observed in the impugned order that the applicant has not submitted any documentary proof in support of receipt of the order on 30.01.2014. In this regard, the applicant wishes to submit that the cover page evidencing the receipt of the order was not available with the applicant and they had requested for copy of the proof of dispatch of the Order in Original No. 01/2014 (R) dated 10.01.2014 from the office of Assistant Commissioner of Central Excise, Tamburam II Division and the same will be submitted during the personal hearing. The applicant also wishes to submit that the delay was not due to the fault of the applicant herein and the orders given by them to their Counsel was misplaced. Hence, the dismissal of the appeal filed by the applicant without exercising the power to condone the delay in filing appeal, when sufficient cause was shown is not sustainable and thus liable to be set aside.

v. Notwithstanding the above, the applicant also wishes to contest the rejection of rebate claimed by them on merits.

vi. The applicant wishes to submit export of excisable goods can be either made without payment of duty under bond or on payment of duty under claim of rebate. Rule 19 and Rule 18 of the Central Excise Rules, 2002 provides for the same respectively and the manufacturer/exporter can freely choose any of the above options for export and they can exercise this option individually for each export consignment without any restrictions. The intention behind both the above rules is to not levy duty on such exports.

vii. The applicant also wishes to submit that in terms of Para 3.3 of Chap 5 of the CBEC Manual of supplementary instructions, it is clear that inputs and capital goods on which cenvat credit is availed can be exported under bond. The said para reads as under:

"3.4 There is no bar for a manufacturer to remove the inputs or capital goods as such for export under bond. "

As such, when the cenvat credit availed inputs and capital goods is permitted to be exported under bond then the intention behind is very clear that the manufacturer/exporter is not required to reverse the credit taken on them. That being the case, since the manufacturer/exporter is not required to reverse the credit taken on inputs when the inputs are exported as such, they have the option to either export such inputs under bond without reversing the credit or by reversing the credit under claim of rebate.

viii. Further, the lower adjudicating authority has placed reliance in the judgment of the Hon'ble Tribunal in the case of M/S. RFH Metal Castings (P) Ltd reported in 2005 (184) ELT 194 (Page Nos. 72 to 74 of this application) wherein it has been held that in respect of inputs exported as such under bond, there is no requirement of any reversal of the credit taken on such inputs and such credit can be utilized for payment of duty on any other transactions. Similarly, the lower authority has also placed reliance on the judgment of the Hon'ble Tribunal in the case of Rico Auto Industries Ltd (reported in 2003 (57) RLT 653) and the Board's Circular No.283/117/1996 CX dated 31.12.1996, which has been relied upon in the aforesaid judgment of RFH Metal Castings. Accordingly, the lower adjudicating authority has held that inputs as such should be allowed to be exported under bond without any reversal of credit, and hence has rejected the rebate claims preferred by the applicant.

ix. In this regard, the applicant wishes to submit that above judgements relied upon by the lower adjudicating authority is not relevant to the issue on hand, as in those case the inputs were exported as such under bond. As held by the Hon'ble Tribunal and Hon'ble High Courts in the case laws

relied upon by the applicant in this appeal, it is settled by now that the assessee is entitled to clear the inputs as such for export after reversal of credit under claim of rebate and there is no statutory bar applicable in respect of the same and there is no compulsion on the applicant to export the inputs as such only under bond without reversal of credit. As the above reasoning adopted by the lower adjudicating authority to deny the rebate claim is not at all maintainable.

x. In view of the foregoing, the applicant wishes to submit that the reversal of credit taken on inputs exported as such amount to payment of duty on such inputs and they are very much entitled for rebate of such duty paid and therefore, the impugned order rejecting their claim of rebate is not legally sustainable and merits to be set aside.

In light of the above submissions, the applicant pleaded to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 20.08.2021. Shri Ganesh K.S.Iyer, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He submitted that time limit should be counted only from the date the OIO was received, therefore, Commissioner(Appeals) has erred in OIA. He submitted on merits also, they have a case as reversal of credit is equivalent to duty paid.

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

6. Government observes that the primary issue involved is whether the delay in the filing of appeal could have been condoned by the Commissioner (Appeals).

7. Government observes that the relevant Section of the Central Excise Act, 1944 reads as follows:

> ***SECTION 35. Appeals to [Commissioner (Appeals)].*** *— (1) 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 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.]*

Government observes that the impugned OIOs were passed on 10.01.2014 and the Applicant has claimed to having received the same on 30.01.2014. The appeals against the OIOs were filed on 21.04.2014 with a Petition seeking condonation of delay of 21 days for the reason that the impugned Orders were misplaced in the counsel's office. The Commissioner(Appeals) found the reason assigned by the Applicant for the delay in filing the appeal to be too frivolous and not satisfactory to consider grant of condonation and dismissed the appeals as time barred.

7.1 Government finds that the Commissioner (Appeals) had rejected the appeals filed by the applicant, without going into the merits of the case, as there was a delay of 21 days in filing the said appeals. Government observes that it is not in dispute that there was a delay of 21 days in filing the appeals covered by the present Revision Applications, which was beyond the period of sixty days but within a further thirty days, from the receipt of the order. Government notes that the issue has been clarified by the Hon'ble Supreme Court in the case of Collector, Land acquisition Anantnag and Another Versus Mst. Katiji and Others [1987 (28) E.L.T. 185 (S.C.)]. Relevant portion of the order is reproduced hereunder:

> *The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on*

'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiable liberal approach in matters instituted in this Court. But the message does not - appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Therefore, Government allows the condonation of delay of 21 days incurred in filing of appeal.

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. 145 & 146/2015 dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals-I) Chennai and remands the case back to him for deciding the case on merits and pass appropriate orders.

9. The Revision Applications are disposed of on the above terms.

Shrawan 3/12/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.849-850/2021-CX (SZ)/ASRA/Mumbai DATED 03.12.2021

To,
M/s. Yazaki Wiring Technologies India (P) Ltd.,
D-7, Industrial Estate,
Maraimalai Nagar - 603209.

Copy to:
1. Commissioner(Appeals-II), CGST, Newry Towers,12th Main Road, Anna Nagar, Chennai – 600 040.
2. Commissioner of GST & Central Excise, Chennai-Outer Commissionerate, Newry Towers, No.2054-I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.