



REGISTERED
SPEED POST

F.Nos. 195/625/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue...16/7/13

ORDER NO. 939/13-Cx DATED 16-07-2013 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 orders-in-appeal
No. SA/31/VAPI/2011 dated 25.04.2011 passed by
Commissioner of Central Excise (Appeals) Vapi

APPLICANT : M/s Sakura Coaters Pvt. Ltd., Mumbai

RESPONDENT : Commissioner of Central Excise, Customs & Service
Tax, Vapi

ORDER

This revision application is filed by M/s Sakura Coaters Pvt. Ltd., 35, New Marine Lines, Court Chambers, Mezzanine Floor, Mumbai – 400 020 against the order-in-appeal No. SA/31/VAPI/2011 dated 25.04.2011 passed by Commissioner of Central Excise (Appeals) Vapi with respect to order-in-original No. 158/AC/DEM/98 dated 30.07.1998 passed by ACCE erstwhile Daman Division of Surat-II, now Daman Commissionerate.

2. The facts of the case in brief are that the applicants are engaged in the manufacturing of PVC wall covering falling under C.S.H 4814.00 of the Central Excise Tariff Act, 1985 for home consumption and export. The applicants received goods from M/s Royal Cushions Vinyl Products, Baska, Halol for job work under Rule 57 f(3) of the Central Excise Rules, 1944. The goods manufactured by the applicants for M/s Royal Cushions Vinyl Pvt. Ltd. were exported from their premises only for which necessary permissions have been taken by M/s Royal Cushions Vinyl Pvt. Ltd. The General Bond No. 7/93-94 dated 10.09.1993 for the export of goods had been executed by M/s Royal Cushions Vinyl Pvt. Ltd. before the Assistant Commissioner, Central Excise, Division-V, Baroda. The Central Excise duty involved on the exported goods was Rs.9,54,462/-. As per the conditions of Rule 13 & 14 of the Central Excise Rules, 1944, exporter was bound to produce proof of export for the consignment cleared under bond within 180 days from the date of export to the jurisdictional Range Superintendent. The applicants could not produce any proof of export to the jurisdictional Range Authorities and therefore, show cause notice dated 21.03.1996 demanding the duty involved on the exported goods along with interest and penalty. The said SCN was decided vide impugned order wherein demand for recovery of Rs.9,54,462/- involved on the exported goods was upheld and no penalty was imposed.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal as time barred.

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 The impugned order passed by the Commissioner (Appeals) is incorrect in law as well as on facts. Therefore, the same is liable to be set aside on this ground itself. The appeal filed by the applicants against the order dated 30.07.1998 before the Commissioner (Appeals) is not barred by time since the order dated 30.07.1998 was received by the applicants on 25.03.2011 and the appeal against the same was filed on 6.4.2011. Therefore, the said appeal is maintainable in law in terms of Section 35 of the Act. The Commissioner (Appeals) dismissing the appeal on account of time bar is incorrect.

4.2 The applicants submit that the burden to furnish the proof of export is on the exporter and the applicants i.e. the job worker for the exporter company are not under any obligation to furnish the same. Hence, on account of the same no duty liability can be fastened against the applicants. Hence, the impugned order confirming the duty demand is liable to be set aside.

5. Personal hearing scheduled in this case on 26.06.2008 was attended by Shri Ganesh Vapu TR, Advocate on behalf of the applicant who reiterated the grounds of revision application.

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

7. Government notes that in this case duty demand of Rs.9,54,462/- alongwith interest was confirmed by original authority vide order-in-original dated 30.07.1998 on the ground the proof of export was not submitted for goods exported without payment of duty under bond. The appeal filed against said order was rejected as time barred, since appeal was filed before Commissioner (Appeals) after 12 years six months of the issue of order-in-original dated 30.07.1998. Now applicant has filed this revision

application on the ground that he had received the impugned order-in-original on 25.03.2011 and therefore he filed appeal in time. Before considering this application on merits, it has to be decided whether appeal was rightly decided as time barred.

8. In this regard, Government observes that applicant had filed appeal on 6.4.2011 against the order-in-original dated 30.07.1998. Regarding contention of applicant that said order-in-original was received by them on 25.03.2011, Commissioner (Appeals) has observed as under :-

"4. I have carefully gone through the impugned order-in-original, contentions made by the applicant in the appeal as well as submissions made during the personal hearing. I find that the applicant have claimed that they had received the impugned order-in-original on 25.03.2011 as a result of RTI application filed by them. In this regard a report was called for from the jurisdictional authorities. A report dated 19.04.2011 was received from the Assistant Commissioner, Vapi Division as per which the records of the acknowledgement of the above said OIO are not available with the Range Office as the impugned OIO was passed by the erstwhile Daman Division. Further it has been reported that the date of information provided under RTI Act cannot be considered as the date of delivery for filing appeal. In this regard I find that it is not forthcoming as to how the OIO was not received by the applicants. Their contention that from 01.01.1997 to 13.03.2009 their factory was under possession of GSFC and GIIC and due to that reason they did not receive the mentioned SCN and OIO does not seem to be based on facts as there is evidence that the said documents were forwarded to the above address and it was their responsibility to collect the said documents from their registered address. Further the applicants have accepted that they received letters dated 05.11.2008 and 13.11.2009 from Range Superintendent asking for recovery of duty mentioned in the impugned OIO. The same have also been sent on the same address. In response to such correspondences they have responded to department on 24.12.2009 in the form of RTI application. If the claim of the applicants is true that they did not receive the impugned SCN and OIO, atleast then they should have immediately approached the jurisdictional authorities after the receipt of letter dated 05.11.2008. Hence the claim of the applicants appears to be an after thought. Till date their premises / address is unchanged. Even if it is so presumed that they did not receive the SCN/OIO, they were aware of the same vide letter dated 05.11.2008 which they have received. It is not clarified why appeal was not filed even then and they have approached the department with an RTI in 2009. Hence, the appeal filed by them is time barred by 12 years and 6 months (approx.). As per Section 35 of the Central Excise Act, 1944, any person aggrieved by any decision or order passed under this Act by Central Excise Officer lower in rank than a Commissioner may file appeal to the Commissioner

(Appeals) within 60 days from the date of communication of such decision or order. The proviso to said Section further provides that Commissioner (Appeals) may, if he/she is satisfied that the applicant was prevented by sufficient cause from presenting the appeal within aforesaid period of 60 days, allow it to be presented within a further period of 30 days. The present appeal therefore, is clearly time barred."

From above, it is quite clear that their address remained unchanged and the OIO was sent on the said address. The other letters dated 5.11.2008 and 13.11.2009 from range office were received by them on same address. So the contention regarding non-receipt of said OIO at the relevant time is not acceptable. The date on which copy of order is received under RTI Act, cannot be considered as date of receipt of impugned OIO. As such the Commissioner (Appeals) has rightly held that appeal was filed after 12 years and 6 months of the receipt of impugned order-in-original.

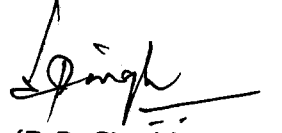
9. Government notes that as per section 35 of CEA 1944, an appeal has to be filed within 60 days from the communication of order-in-original and Commissioner (Appeals) is empowered to condone the delay upto 30 days. In this case, appeal is filed after a delay of more than 12 years and therefore it is rightly rejected as time barred by Commissioner (Appeals). Hon'ble Supreme Court has held in the case M/s Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond a delay of 30 days. Recently, Hon'ble High Court of Bombay in the case of Khanpur Taluka Cooperative Spinning Mills Ltd. vs. CCE Pune-II 2013 (292) ELT 16 (Bom) has held that in appeal, appeal dismissed as time barred by Commissioner (Appeals), High Court can neither direct Commissioner (Appeals) to condone the delay not interfere with the order passed by original authority. Same view was taken by Hon'ble Bombay High Court in the case of Raj Chemicals vs. UOI 2013 (287) ELT 145 (Bom.).

10. In view of above position, Government holds that Commissioner (Appeals) has rightly rejected the appeal as time barred and therefore the instant revision application cannot be entertained on merits of case under section 35 EE of CEA 1944. Government

do not find any infirmity in the impugned order-in-appeal and therefore upholds the same.

11. The revision application is thus rejected in terms of above.

12. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Sakura Coaters Pvt. Ltd.,
35, New Marine Lines, Court Chambers,
Mezzanine Floor,
Mumbai – 400 020



(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
Q.B.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
एन.एच.रोड/Con. of I.H.S.
नई दिल्ली/New Delhi

Order No. 939/13-Cx dated 16-07-2013

Copy to:

1. Commissioner of Central Excise , Customs & Service Tax Vapi, 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi – 396 191.
2. Commissioner of Central Excise (Appeals) , Customs & Service Tax Vapi, 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi – 396 191.
3. The Assisant Commissioner of Central Excise, Daman Division Surat-II, 1st Floor, Sunrise Apartment, Vapi-Daman Road, Dabhel, Daman
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



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

