

REGISTERED
SPEED POST



F.No.198/86/2015-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.....

Order No. 646/2018-Cx dated 5-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional 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.177-180/Kol-IV/14 dated 27.04.2015 passed by the Commissioner of Central Excise (Appeals) Kolkata-IV

Applicant : Commissioner of Central Excise, Kolkata-IV

Respondent : M/s Bajarangbali Vanijya Pvt. Ltd., Kolkata

ORDER

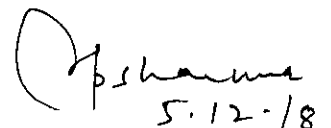
A Revision Application No.198/86/2015-RA dated 27.04.2015 is filed by the Commissioner of Central Excise, Kolkata-IV (hereinafter referred to as the applicant), against the Order-in-Appeal No.177-180/Kol-IV/14 dated 27.04.2015, passed by the Commissioner of Central Excise (Appeals) Kolkata whereby the applicant's appeal filed against the Order-in-Original is rejected.

2. A personal hearing was offered in this case on 11.10.18 which was availed by Shri Raman Kumar Sinha, Assistant Commissioner, for the applicant and submitted a write-up to support their case that OIA is not legal. He also submitted a copy of a COD application dated 22.9.15 claimed to have been sent earlier. But no one availed hearing for the respondent. Further, no request is also received for fixing of any other date of hearing from which it is implicit that they are not interested in availing personal hearing in this case.

3. The Government has examined the matter and it is observed that the revision application is filed after a delay of 14 days. In the COD application filed alongwith revision application the reason for the delay is stated to be that the Review Order was passed after the expiry of 3 months due to some procedural hassles which was purely within the control of concerned commissionerate. By giving this reason the administrative laxity has been rather clearly admitted by the applicant which cannot be considered as "a sufficient cause which might have prevented the applicant from presenting the revision application in time" as is envisaged in Section 35EE(2) of the Central Excise Act, 1944. Therefore, the Government considers that it is not a deserving case for condonation of delay under Section 35EE(2) of the Central Excise Act and the revision application is liable for rejection on this account alone as time barred. Besides above, the revision application is not found maintainable on merit also as no substantive reason has been given for questioning the OIA. A vague reason that the seal of the container had been tempered with and OTS seal numbers mentioned in the export documents did not match is only cited as grounds of revision. But it is completely silent on the vital point whether any tempering with the seal on the container or mis-matching of OTS seal numbers in the exported documents changed the status of the goods cleared from the factory for export

● purpose and the exported goods. On the other hand, the Commissioner (Appeals) has clearly held in his Order that the goods on payment of duty cleared from the factory were exported and all relevant export documents like bill of lading, the mate receipt, BRCs and endorsement of the custom authorities certifying that the goods are exported are produced by the respondent in this case. Thus, the Government finds that there is no doubt with regard to export of the goods which had been cleared from the factory on payment of duty, compliance of all other conditions specified in Notification No.19/2004-CE dated 6.9.2004 and the above objection raised in the revision application is purely of technical nature for which rebate of duty cannot be denied. The other contention that the Commissioner (Appeals) has violated the provision of Rule 5 of the Central Excise (Appeals) Rules, 2001 by allowing the additional evidence in the form of two certificates given by the two exporters regarding using of another OTS seal number is also found legally untenable as these certificates cannot be regarded as additional evidences. In fact the issue of mis-matching of seal number in the export documents was raised in the OIO only and, therefore, the respondent was well within their rights to rebut the same before the Commissioner (Appeals) by producing the certificates of exporters or any other evidence. Considering the above facts the Government does not find any lacuna in the Order of the Commissioner (Appeals) and the revision application is not found justifiable in this case.

4. Accordingly, the revision application is rejected.



(R.P.Sharma)

Additional Secretary to the Government of India

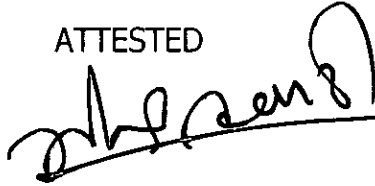
M/s Bajarangbali Vanijya Pvt. Ltd,
31/32, Milestone, Delhi Road, Pearapore,
Sheoraphuli, Distt. Hooghly (WB)-712223

Order No. 646/18-Cx dated 5-12-2018

Copy to:

1. Commissioner of Central Excise, Dankunu Division, Kolkata-IV Commissionerate, Fatakgora, Bank of Baroda Building, Chandannagar, Hooghly-700014.
2. Commissioner (Appeals-II) Central Excise, Kolkata, Bamboo Villa, 3rd Floor, 169, AJC Bose Road, Kolkata-700014.
3. The Assistant Commissioner of Central Excise, Dankunu Division, Kolkata-IV Commissionerate, Fatakgora, Bank of Baroda Building, Chandannagar, Hooghly-700014.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(Ashish Tiwari)
Assistant Commissioner