

REGISTERED
SPEED POST



F.No. 195/142/15-R.A.
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...11/12/18...

Order No. 648/2018—CX dated 6-12-18 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. 09(SLM) CE/JPR/2015 dated 15/01/2015, passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur.

Applicant : M/s. SRF Ltd., Alwar.

Respondent : Commissioner of Central Excise, Alwar.

ORDER

A Revision Application No. 195/142/2015-R.A. dated 18/05/2015 is filed by M/s SRF Ltd., Alwar (hereinafter referred to as the applicant) against Order-in-Appeal no. 09(SLM) CE/JPR/2015 dated 15/01/2015, passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur.

2. The brief facts leading to the present proceeding are that the applicant had filed a rebate claim of Rs. 74,85,986/- on 26/03/2010 for the duty paid on export of goods exported on 03/10/2009. Thereafter the applicant, vide their letter dated 25/06/2010, withdrew the claim relating to ARE-I No. 303/09-10 for Rs. 1,50,140/- informing that they would apply for the rebate amount relating to ARE-I No. 303/09-10 again in due course. Accordingly, the remaining rebate of duty of Rs. 73,35,846/- was sanctioned. The Division Office returned the ARE-I No. 303/09-10 along with enclosures on 27/01/2011 to the applicant and the applicant filed the rebate claim for Rs. 1,50,140/- on 24/10/2011 which was rejected by the original adjudicating authority on the ground that the same was filed after an expiry of one year and it was time barred in terms of Section 11B of Central Excise Act, 1944. The applicant's appeal before the Commissioner (Appeals) was also rejected vide the aforementioned Order-in-Appeal.

3. Personal hearing was granted on 21/08/2018 which was attended by Sh. R. Krishnan, Advocate, on behalf of the applicant who mainly

reiterated the above grounds of revision. However, no one appeared for the respondent and no request has been received for any personal hearing from which it is implied that they are not interested in any further personal hearing in the matter.

4. The government has examined the matter and it is observed at the outset that the Order-in-Appeal dated 15/01/2015 is claimed to have been received on 18/02/2015 by the applicant even when it was dispatched on 20/01/2015 as per the Order-in-Appeal itself. The gap of almost one month in receiving the Order-in-Appeal is unusual and the said delayed receipt of the Order-in-Appeal is not supported by any cogent evidence. Further, even if it is assumed that the Order-in-Appeal was received on 18/02/2015, the revision application has been filed by the application after delay of 1-3 days as per the condonation of delay (COD) application dated 18/05/2015 filed by the applicant. Under Section 35 EE (2) of the Central Excise Act, 1944, delay up to 3 months can be condoned by the government on being satisfied that the applicant was prevented by sufficient cause from preventing the applicant within the normal period of 3 months. In their COD application four reasons have been advanced for delayed filing which are that the legal cell of their head office took decision to file an appeal after more than 2 months on 20/04/2015, the advocate finalized the revision application on 10/05/2015, the authorized signatory of the

company could sign the revision application on 15/05/2015 as he was out of station earlier and 16-17/05/2015 happened to be holidays on account of Saturday and Sunday. These four reasons are clearly relating to the functional problems of the applicant's organization and manifestly reflect laxity in this matter at their end as more than 2 months were taken in taking a decision for filing a revision application itself. Even other reasons do not reveal any sufficient cause beyond the control of the applicant which might have prevented the applicant in filing the revision application in time. Therefore, the government does not find it as a deserving case to condone the delay in this case as it is not a matter of extent of delay but is a matter relating to the reason of delay. Accordingly the revision application is liable for rejection on the ground of time limitation on this ground itself.

5. Besides the above reason, the rebate claim of Rs. 1,50,140/- against ARE-I No. 303/09-10 dated 23/09/2009 is not found maintainable as it is not in dispute that the goods against this ARE-I were exported on 03/10/2009 and the applicant had filed rebate claim against this ARE-I on 24/10/2011 which is clearly beyond one year from the relevant date. Therefore, the rebate claim of Rs. 1,50,140/- is hit by time limitation of one year as envisaged in Section 11B of Central Excise Act, 1944. The applicant has stated that they had claimed rebate of duty against the ARE-I

and it was withdrawn vide their letter dated 25/06/2010 for the purpose of its re-submission and, therefore, their re-submitted rebate claim against the said ARE-I should be considered in continuation of their original rebate claim dated 26/03/2010. But this argument is not found convincing as no evidence has been produced by the applicant to indicate that the said ARE-I was withdrawn at the behest of any Divisional Authority. On the contrary, it is manifest from their letter dated 25/06/2010 addressed to the Assistant Commissioner of the Bhiwadi Division that the ARE-I No. 303/09-10 dated 23/09/2009 was withdrawn on their own stating that they will apply for rebate claim again against this ARE-I in due course. From the word "again" used in their letter it is evident that they had intended to file a fresh rebate claim against this ARE-I and actually they had filed a second claim on 24/10/2011 against this ARE-I. Since original rebate claim dated 26/03/2010 had already been sanctioned much earlier without considering the ARE-I No. 303, the second rebate claim dated 24/10/2011 cannot be considered in continuation of the earlier rebate claim dated 26/03/2010. The applicant has also raised a point that they could not apply for rebate claim against ARE-I No. 303 as it was given by the Division Office after a gap of 7 months vide their letter dated 27/01/2011. But this plea is not having much logic as they could file rebate claim against ARE-I No. 303 well within one year's period on the basis of its Xerox copy since its original

copy was already with the Division Office. Further while the applicant has blamed the Divisional Office for delayed supply of the copy of ARE-I No. 303, they have not given any explanation for filing the rebate claim against the above ARE-I on 24/10/2011 even when its copy had been provided by the Divisional Assistant Commissioner almost 9 months before vide his letter dated 27/01/2011. Thus it is a clear case of laches on the part of the applicant for delayed filing of the rebate claim for which no one else can be blamed. Considering the above discussed facts, the government does not find any error in the order of the Commissioner (Appeals) whereby the rebate claim has been held as time-barred.

6. Accordingly, the revision application filed by M/s SRF Ltd. is rejected.

R. P. Sharma
6.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s SRF Ltd.,
Attn. Sh. Sushil Dutta,
Corporate Taxation, Block "C",
Green Wood City, Gurugram-122 003.
G.O.I. Order No. 648/18-Cx dated 6-12-2018

Copy to:-

1. Commissioner of Central Excise and Service Tax, "A" Block, Surya Nagar, Alwar-301 001.
2. Commissioner (Appeals), Customs & Central Excise (Appeals), NCR Building, C-Scheme, Jaipur.

3. P.A. to ASCR

4. Guard file

5. Spare copy.

ATTESTED
Nirmala Devi
6/12/18
(NIRMALA DEVI)
Section Officer