



F. No. 195/255/2017-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue 20/01/23

Order No. 32/2023-CX dated 20-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, 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. 28/2008 dated 17.10.2008, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

Applicant : M/s Thiru Arooran Sugars Ltd., Thanjavur.

Respondent : The Commissioner of CGST & Central Excise, Tiruchirapalli.

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**ORDER**

A Revision Application No. 195/255/2017-RA dated 12.07.2017 has been filed by M/s Thiru Arooran Sugars Ltd., Thanjavur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 28/2018 dated 17.10.2008, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 09/2017 (Rebate) dated 11.04.2017, passed by the Assistant Commissioner of Customs & Central Excise, Thanjavur.

2. Brief facts of the case are that the Applicants herein are manufacturers of sugar and molasses etc. They filed a rebate claim for Rs. 24,80,487/-, towards the duty paid at the time of export of 28,610 quintals of White Crystal Sugar, cleared under ARE-1 No. 04/06-07 dated 04.07.2006, through Tuticorin Port to Pakistan, under Shipping Bill No. 1625985 dated 29.06.2006. The rebate claim for Rs. 24,80,487/- was inclusive of a claim of Sugar Cess, amounting to Rs. 4,00,540/-, paid on the exported white sugar. The original authority, vide the Order-in-Original dated 11.04.2007, rejected the rebate claim to the extent of Sugar Cess of Rs. 4,00,540/-, holding that the Sugar Cess was not included in the meaning of 'duty' as per Notification 19/2004-CE(NT) dated 06.09.2004, issued under Rule 18 of the Central Excise Rules, 2002, and, hence, the rebate claim in respect of the Sugar Cess paid was not admissible. The appeal, filed by the Applicant herein, has been rejected by the Commissioner (Appeals), vide impugned Order-in-Appeal. The Applicants herein, thereafter, filed an appeal before CESTAT, which has been rejected, as non-maintainable, by CESTAT, Chennai Bench, vide Final Order No. 40549/2017 dated 24.03.2017.

3.1 The Revision Application has been filed, mainly, on the grounds that as per Section 3 (4) of the Sugar Cess Act, 1982, the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duty, are made applicable for the purpose of payment of Sugar Cess; that Section 3 (1) of the Sugar Cess Act refers to the Cess paid on sugar as duty of excise and, therefore, the amount paid as Sugar Cess is also liable to be refunded by way of rebate notwithstanding the fact the same is not mentioned in the Explanation to Notification No. 19/2004-CE(NT); that as per Board's Order No. 60/1/2006-CX dated 03.01.2006, passed under Section 37B of the Central Excise Act, provisions of Central Excise Act, including exemptions and refunds, would be applicable to all duties of excise chargeable under different Acts; that the said Circular further states that none of the duties leviable under said Acts are required to be paid on export of goods; that without prejudice to the other submissions the lower authority ought to have considered the rebate claim as a claim of refund and sanctioned the same.

3.2 Upon receipt of the revision application, it was pointed out to the Applicants, vide letter dated 14.09.2018, that the revision application was delayed. In response thereto, a miscellaneous application for condonation of delay was received, on 08.08.2018, stating that-

*"1.0 M/s. Thiru Arooran Sugars Ltd. (hereinafter referred to as the Applicant/ Appellant) has preferred an appeal before the Joint Secretary against Order-in-Appeal No. 28/2008 dated 17.10.2018. The date of receipt of the said Order was 10.04.2017. The due date for filing the appeal fell due on or before 10.07.2017. The appeal was filed on 10.07.2017 through courier from Chennai to the office of the Joint Secretary.*

*2.0 The applicant wishes to submit that the appellant is not aware of the delay, since the application was filed within the prescribed period for filing the appeal before the authority provided in the impugned order and the delay, if any, in receipt of the appeal paper is neither willful nor wanton."*

4. The personal hearing in the matter was fixed 30.12.2022 which was adjourned to 16.01.2023 at the request of the Applicants Sh. M. Karthikeyan, Advocate appeared for the Applicant in the personal hearing held, in virtual mode, on 16.01.2023. Upon being asked about the reasons for delay in filing of the instant RA, Sh. Karthikeyan requested for time upto Thursday, 19.01.2023 to file a date chart and make submissions, if any, in this regard. Time was, accordingly, granted. No further hearing was required. Sh. Karthikeyan, Advocate submitted that the case on merits is covered by the judgment of Hon'ble Madras High Court in their own case, wherein the Hon'ble High Court has allowed their WP against the earlier Order No. 519/2011-CX dated 24.05.2011 of the Government {2018 (11) TMI 17-Madras High Court)}. Hence, the RA should be allowed. No one appeared for the Respondent department on any of the dates nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. After the personal hearing the written submissions dated 17.01.2023 have been filed by the Applicants herein in respect of the condonation of delay. It has been submitted therein that the Order-in-Appeal impugned herein was received by the Applicants on 31.10.2008 and the appeal was filed before the CESTAT on 28.01.2009. The CESTAT's Final Order dated 24.03.2017 was received by the Applicants on 10.04.2017, whereas revision application was filed on 12.07.2017. Therefore, after excluding the period of pursuing the appeal before the CESTAT, i.e., period from 28.01.2009 to 10.04.2017, the revision application has been filed within six months from the date of Order-in-Appeal. As such, there is a delay of three months in filing the revision application, which was due to wrong understanding of the provisions of law and may be condoned.

6.1 The Government has carefully examined the matter. The preliminary question that arises for consideration is whether the delay in filing of the instant revision application should be condoned.

6.2 It is the contention of the Applicants herein that the period of 28.01.2009 to 10.04.2017, i.e., the period spent in pursuing the appeal in wrong forum, i.e., CESTAT is excludable from the limitation period. Though, no reference is made to any statutory provision based on which this averment has been made, it would appear that the same is premised in sub-section (2) of Section 14 of the Limitation Act, 1963. The said sub-section (2) reads as under:

***"14. Exclusion of time of proceeding bonafide in Court without jurisdiction.-***

*(2) in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

In the case of M.P. Steel Corporation vs. Commissioner of Central Excise {2015 (319) ELT 373 (SC)}, the Hon'ble Supreme Court has held that *"the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply."* Therefore, it is clear that the subject application for condonation of delay has to be considered by the Government, as revisionary authority, by keeping in view the principles of Section 14 of the Limitation Act.

6.3 The Government observes that in the case of M.P. Steel Corporation (supra), the Hon'ble Supreme Court has referred to the Apex Court's earlier decision in the matter of Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department (2008 7 SCC 169), which lays down five conditions which must be satisfied before Section 14 can be pressed into service. One of these five conditions is that prior proceeding, i.e., abortive proceeding before the wrong forum, had been *"prosecuted with due diligence and in good faith"*. In M.P. Steel Corporation, the Hon'ble Supreme Court has observed that *"These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction."* Similarly, in the case of Coal India Ltd. and another vs. M/s. Ujjal Transport Agency & others (Indian Kanoon Document No. 1747454), the Hon'ble Supreme Court has laid down that for the provisions of Section 14 to apply the

appellants are liable to demonstrate that *"they were bonafide and with due diligence pursuing the remedy before a court without jurisdiction"*. Thus, it is clear from the aforesaid decisions of the Hon'ble Supreme Court that the Applicants herein have to satisfy that they had been prosecuting the appeal before CESTAT, i.e., wrong forum, with due diligence and in good faith i.e., bonafide; and, therefore, should not be guilty of negligence, lapse or inaction.

6.4 Next question, therefore, that arises for consideration is whether the Applicants herein were pursuing the remedy with CESTAT in good faith and with due diligence or there was negligence, lapse or inaction on their part in pursuing remedy with CESTAT. The Government observes that as per the provisions of Section 35B of the Central Excise Act, 1944, any party aggrieved by any order passed by the Commissioner (Appeals), under Section 35A, may file an appeal before the CESTAT, except in respect of those Orders of Commissioner (Appeals) which relate to matters listed in the first proviso to said sub-section (1). As per clause (b) of the said proviso, matters relating to *"a rebate of duty of excise on goods exported to any country or territory outside India"* is a matter excluded from the jurisdiction of Tribunal. Further, as per Section 35EE (1), in respect of the orders passed by the Commissioner (Appeals) where the order is of a nature referred to in the first proviso to sub-section (1) of Section 35B, a remedy of revision before the Central Government has been provided. Therefore, the law is very clear. Any party aggrieved by the order of Commissioner (Appeals) relating to rebate of duty of excise on goods exported outside India has a remedy of revision before the Central Government under Section 35EE.

6.5 Further, it is evident from records that the Applicants herein were, at the relevant time, well aware of the legal position that the correct remedy in the subject cases is by way of revision before the Central Government and not as an appeal before the CESTAT. This is evident from the records of revision application No. 195/38/2009-RA dated 12.03.2009, which was filed by the Applicants herein, against the Order-in-Appeal No. 67/2008 dated 18.12.2008, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli, that was disposed of by the Government, vide Order No. 519/2011-CX dated 24.05.2011. The RA No. 195/38/2009-RA dated 12.03.2009 involves the identical issue, i.e., rebate of Sugar Cess paid in respect of white sugar exported by the Applicants herein. It is to be noted that the present revision application has been filed against Order-in-Appeal dated 17.10.2008, which was received by the Applicants on 31.10.2008 whereas, as per records, the Order-in-Appeal No. 67/2008 dated 18.12.2008 was received by them on 16.01.2009. The appeal against the Order-in-Appeal dated 17.10.2008, which is impugned herein, was admittedly filed before the CESTAT on 28.01.2009 whereas RA against the Order-in-Appeal dated 18.12.2008 was filed before the Central Government on 12.03.2009. Thus, presuming that the appeal before CESTAT was filed on 28.01.2009 under a bonafide belief of such appeal before CESTAT being the

correct remedy, it is apparent that within less than six weeks of filing the appeal (i.e. by 12.03.2009), the Applicants herein became aware that the remedy correctly lies before the Central Government. In such a situation, it would have been bonafide for the Applicants herein to immediately withdraw their appeal before CESTAT and approach the Central Government in revision. However, the Applicants herein did not do so and kept pursuing their appeal before the CESTAT, which was ultimately rejected as non-maintainable after 08 years. Obviously, this is a serious lapse indicating negligence and lack of bonafide on part of the Applicants herein. As such, the benefit of the principles of Section 14 of the Limitation Act, 1963 cannot be extended in the present case.

6.6 In this light, applying the ratio of the judgments of the Hon'ble Supreme Court cited above, the period spent by the Applicants herein in pursuing remedy in the wrong forum cannot be excluded for computing limitation under sub-section (1) of Section 35EE ibid. The revision <sup>application</sup> is, therefore, hopelessly time barred and is liable to be dismissed for this reason.

7. The revision <sup>(is)</sup> application is, accordingly, rejected as time barred.



(Sandeep Prakash)

Additional Secretary to the Government of India

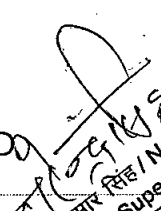
M/s Thiru Arooran Sugars, Ltd.,  
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Tamil Nadu.

G.O.I. Order No. 32/23-CX dated 20-01-2023

Copy to:

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2. The Commissioner of Customs & Central Excise (Appeals), No. 1 Williams Road, Cantonment, Tiruchirapalli-620001.
3. Swamy Associates, No. 11, Sattva, 3<sup>rd</sup> Floor, Sri Lakshmi Street, off 100 feet Road, Nangannallur, Chennai-600061.
4. PA to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



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