

SPEED POST



F.No. 195/222/2017-R.A
F.No. 195/223/2017-R.A
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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. 22/9/22

Order No. 43-45/2022-CX dated 22-09-2022 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 Applications filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. BGM-EXCUS-000-GLB-DC-APP-HAB-093-2014, BGM-EXCUS-000-GLB-DC-APP-HAB-094-2014 both dated 21.11.2014 and No. BGM-EXCUS-000-GLB-DC-APP-HAB-081-2014 dated 05.11.2014, passed by the Commissioner of Central Excise (Appeals), Mysore.

Applicant : M/s Dinesh Fragrance, Bidar, Karnataka.

Respondent : Commissioner of CGST & Central Excise, Belgavi.

ORDER

03 Revision Applications Nos. 195/222-224/2017-RA all dated 09.06.2017 have been filed by M/s Dinesh Fragrance, Bidar, Karnataka (hereinafter referred to as "Applicants") against the Orders-in-Appeal Nos. BGM-EXCUS-000-GLB-DC-APP-HAB-093-2014, BGM-EXCUS-000-GLB-DC-APP-HAB-094-2014 both dated 21.11.2014 and No. BGM-EXCUS-000-GLB-DC-APP-HAB-081-2014 dated 05.11.2014, passed by the Commissioner of Central Excise (Appeals), Mysore.

2. Briefly, the Applicants were the holders of Central Excise registration for manufacture of pan masala and pan masala containing tobacco, commonly called as 'Gutkha'. They had filed 03 rebate claims, under the Notification No. 32/2008-CE(NT) dated 28.08.2008, in respect of duty paid on the three machines used for packing of export pouches during the month of November, 2012. Thereafter, the Applicants was issued Show Cause Notices as to why the rebate claim should not be restricted as per the condition no. (vi) of the Notification No. 32/2008-CE(NT) dated 28.08.2008 and in terms of Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act, 1944 read with Rule 14 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (herein after as "Packing Machines rules") and the notifications issued thereunder. The Applicants, vide their replies dated 20.03.2013, 18.03.2013 and 11.04.2013, respectively, urged that they were entitled for the duties paid and deposited on goods exported and that the said rebate amount be granted to them. The Deputy Commissioner of Central Excise, Gulbarga Division, Gulbarga vide Orders-in-Original No. GLB/EXCUS/000/DIVG/DYC/BDM/08/2013-14(R) dated 17.04.2013, GLB/EXCUS/000/DIVG/DYC/BDM/07/2013-14(R) dated 17.04.2013 and GLB/EXCUS/000/DIVG/DYC/BDM/15/2013-14(R) dated 13.05.2013 allowed the rebate restricting it to the sum of Rs. 79,59,737/-, Rs. 69,48,296/- and Rs. 93,45,576/-, respectively, and rejected balance rebate amount as being not admissible. Against the Orders-in-Original Nos. GLB/EXCUS/000/DIVG/DYC /BDM/08/2013-14(R) and GLB/EXCUS/000/DIVG/DYC/ BDM/07/2013-14(R) both dated 17.04.2013, the Applicants then filed appeals along with application for

Condonation of Delay for condoning the delay of 10 days with the Commissioner of Central Excise (Appeals), Mysore. The Commissioner (Appeals), however, vide Orders-in-Appeal Nos. BGM-EXCUS-000-GLB-DC-APP-HAB-093-2014, BGM-EXCUS-000-GLB-DC-APP-HAB-094-2014 both dated 21.11.2014 rejected these appeals as time barred. The appeal filed against the Order-in-Original No. GLB/EXCUS/000/DIVG/DYC/BDM/15/2013-14(R) dated 13.05.2015 was rejected, on merits, vide Order-in-Appeal No. BGM-EXCUS-000-GLB-DC-APP-HAB-081-2014 dated 05.11.2014.

3. Aggrieved, the Applicants have filed the subject three Revision Applications. Submissions in respect of Revision Applications F.No. 195/222/2017-RA and F.No. 195/223/2017-RA are :

- (i) The Commissioner (Appeals) had addressed the Orders-in-Appeal to their factory address, which had been closed.
- (ii) The department had failed to send to the Applicants the notice of hearing, through Speed Post in view of the mandate of Section 37C of the Central Excise Act, 1944. In the absence of service of notice of personal hearing, dispatching orders, the Applicants or their representative could not remain present before the Commissioner (Appeals) during the course of personal hearing.
- (iii) The Applicants had surrendered the Central Excise Registration Certificate w.e.f. 16.09.2013 and department without bothering to look into the return of communications 'undelivered' continued to err. Had the Commissioner (Appeals) directed the officers to send the orders to the correct and active addresses mentioned in the column 5, the present situation of delay would not have occurred.
- (iv) The Applicants then filed RTI application on 24.02.2017 and the Department then vide letter dated 08.03.2017 sent the copies of the order to the correct address.
- (v) The Commissioner (Appeals) also failed to take into account the well settled law position that liberal approach should be adopted in the interest of justice for condoning the delay of 10 days though mandatory provision

empowers the Commissioner (Appeals) to condone such delays upto 30 days. In this they relied on few case laws.

- (vi) The Applicants prayed that case be remanded to decide the matter afresh after condoning the delay of 10 days only in filing the appeal before the Commissioner (Appeals) and also to consider for sanctioning the rejected rebate amount to the Applicants.

Submissions in Revision Application No. 195/224/2017-RA are :

- (i) The Applicants had deposited a duty of Rs. 1,08,00,000/- on three pouch packing machines to be used for packing of export goods and goods packed from these machines has been exported. Therefore, entire duty paid is rebatable. Even otherwise also, FOB value is not equal to market price, FOB value does not include taxes and duties being not payable, whereas, MRP of identical goods being cleared by them, as per Rule 12 of the Packing Machines Rules, was Rs. 21/- per pouch of 2 gm packing and on this basis, the market price of export goods in local market would have been atleast 1,51,84,500 pouches multiply by Rs. 2/-, which comes to Rs. 3,3,69,000/-.
- (ii) The methodology adopted by the adjudicating authority and the stand taken on the same line by the Commissioner (Appeals) is not correct as per law and, thus, the benefit of rebate as claimed by the Applicants is in order.

4. Personal hearing was held, in virtual mode, on 21.09.2022. Sh. B. Kumar, Consultant appeared for the Applicant and reiterated the contents of the respective RAs. Upon being asked about delay in filing of RAs, Sh. Kumar stated that the impugned Orders were received by them only on 10.03.2017 pursuant to the RTI applications filed by them, as these Orders had been sent by the O/o Commissioner (Appeals) at the wrong address. Sh. D. Madhusudan Rao, AC supported the orders of lower authorities.

5. The Government has carefully examined the matter. At the outset, it is observed that Orders-in-Appeal impugned herein have been passed on

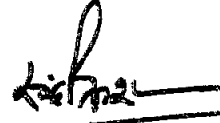
21.11.2014 and 05.11.2014, whereas all the three revision applications have been filed on 09.06.2017 i.e. after a period of 2 years and 8 months. It has been explained by the Applicant that the Orders-in-Appeal were sent to their factory address whose registration had been surrendered by them on 16.09.2013 and, therefore, it is only by filing application under RTI Act, 2005 that they could obtain a copy of impugned Orders-in-Appeal on 10.03.2017. The Government observes that in the form EA-1, i.e., the form of appeal before the Commissioner (Appeals), the following address of the Applicants is mentioned:

1. M/s Dinesh Fragrance,
Plot No. 272-273, KIABD,
Masiuzzama Building,
Kolhapur Industrial Area, Naubad,
Bidar, Karnataka.

It is further observed that the impugned Orders-in-Appeal have been sent to the same address, as above. Not only that, from the papers placed on record, it is observed that the intimations of personal hearing were also sent by the office of Commissioner (Appeals) at the same address, vide letters dated 12.05.2014. From the Orders-in-Appeal impugned herein, it is observed that these letters dated 12.05.2014 were received by the Applicants at the given address and vide their Consultant's letter dated 21.05.2014, they waived the hearing and requested for the appeals to be decided on the basis of grounds urged in the Appeal memorandum. Thus, it is apparent that the Applicants were receiving and responding to the communications at the factory address in May, 2014, which is stated to have been closed in August, 2013 itself. In any case, if the address had changed, it was for the Applicant to update the records with the Commissioner (Appeals). Another aspect that needs consideration is that the Applicants were all through aware that the Commissioner (Appeals) was considering their Appeals in May, 2014 when the personal hearings were granted. Therefore, it is inexplicable that the Applicants did not pursue the matter thereafter and suddenly woke up only after two years to inquire about the status of their appeals. The Government observes that the Hon'ble Delhi

High Court has, in the case of Brajesh Kumar Dubey Vs. Commissioner of Customs {2016 (339) ELT 70 (Delhi)}, taken a view that delay would not be condonable in such circumstances. In this light, the Government has no hesitation in holding that subject revision applications have been filed with a delay of more than 02 years and that this delay cannot be condoned in terms of the proviso to sub-section (2) of Section 35EE of the Central Excise Act, 1944.

6. The revision applications are, accordingly, rejected as time-barred.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Dinesh Fragrance,
53, Pali Road, Mogra, Jodhpur,
Rajasthan – 342 802.

G.O.I. Order No. 43-45/22-CX dated 22-01-2022

Copy to: -

1. The Commissioner of CGST & Central Excise, No. 71, Club Road, Belgavi-590 001 (Karnataka).
2. The Commissioner of Central Excise (Appeals), S1 & S2, Vinaya Marg, Sidhartha Nagar, Mysuru – 570 011.
3. Sh. B. Kumar, Consultant, 117/55, Egmore High Road, Egmore, Chennai - 600 008.
4. PS to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



अश्वनी कुमार लॉ / Ashwani Kumar Lau
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