

SPEED POST



F.No. 195/501/2016-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.....7/10/22

Order No. 52/22-Cx dated 7-10-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.242/2015 (CXA-I) dated 26.11.2015 passed by the Commissioner of Central Excise (Appeals-I), Chennai.

Applicant : M/s Kothari Petrochemicals Ltd., Chennai.

Respondents : The Pr.Commissioner of CGST & Central Excise, Chennai North
Chennai.

ORDER

A Revision Application No. 195/501/2016-RA dated 02.11.2016 has been filed by M/s Kothari Petrochemicals Ltd., Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 242/2015 (CXA-I) dated 26.11.2015 passed by the Commissioner of Central Excise (Appeals-I), Chennai ,wherein, the Commissioner (Appeals) has rejected the appeal arising out of the Order-in-Original No. 60/2013(R) dated 20.11.2013, passed by the Assistant Commissioner of Central Excise , C-Division, Chennai-I Commissionerate , Chennai.

2. Brief facts of the case are that the Applicant is engaged in the manufacture of Polyisobutylene classified under sub- heading 39022000 of the Central Excise Tariff Act, 1985. They filed a rebate claim for an amount of Rs. 1,60,128/- with the jurisdictional Central Excise authority who rejected the rebate claim vide Order-in-Original No. 60/2013(R) dated 20.11.2013 . The Applicant herein preferred an appeal with the Commissioner (Appeals) who, vide the impugned O-I-A, dismissed the appeal, as time-barred, without going into the merits of the case. The Applicants approached the Hon'ble High Court of Madras, vide Writ Petition No. 23616 of 2016, which was disposed of by the Hon'ble High Court, vide order dated 11.07.2016, granting liberty to the Applicant to move the revisional authority.

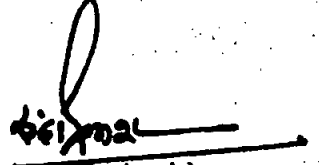
3. The revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) had not relied on Section 37 C of the Central Excise Act,1944 while passing the O-I-A, which mandates the procedure for serving the decisions , order, summon, notices etc; that the Commissioner (Appeals) has erred by relying upon the photo copy of the dispatch register and held the order was duly

served upon the assessee without taking into consideration of the actual date of receipt of the order by the assessee.

4. Personal hearing, in virtual mode, was held on 07.10.2022. Sh. J. Janarthanan, AGM (Taxation), appeared for the Applicant and reiterated the contents of the RA. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter.

5. Government has examined the matter carefully. In the present case, the Commissioner (Appeals) has rejected the appeal as time barred by counting the limitation period from the date of dispatch i.e. 27.11.2013, of the Order-in-Original. The Government observes that in terms of section 37 C (1) of the Central Excise Act, 1944, any decision or order shall be served by tendering it or sending it by registered post with acknowledgement due or by speed post with proof of delivery or by courier. Further, as per sub-section (2) thereof the order shall be deemed to have been served on the date on which it is tendered or delivered by post. Thus, there is no authority in law to treat the date of dispatch as the date of delivery. It is further observed that the actual date of delivery has not been verified by the Commissioner (Appeals). In this light, it will be in the interest of justice to remand the matter to the Commissioner (Appeals) with directions to decide the issue of limitation after causing necessary verification to ascertain the date of delivery to the Applicant herein of the order impugned before him and thereafter decide the appeal on merits, if so warranted.

5. The revision application is allowed by way of remand to Commissioner (Appeals),
with direction as above.



(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Kothari petrochemicals Ltd.,
1/2B,33/5, Sathangadu Village, Manali
Chennai-600068.

Order No. 52/22-Cx dated 7-10-2022

Copy to:

1. Commissioner of Central Excise (Appeals-I), Central Excise building, 26/1, Mahatama Gandhi Road, Nugambakkam, Chennai-600034.
2. Pr. Commissioner of CGST & Central Excise, Chennai North, 26/1, MG Road, Nungabakkam, Chennai-600034.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED


(Narender Kumar Singh)
Superintendent (RA)

07.10.22
(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi