



F. No. 195/155/SZ/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. 09/02/2023

Order No. 56/2023-CX dated 09-02-2023 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. 08/2014-CE dated 07.01.2014, passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

Applicant : M/s Safil Industries Pvt. Ltd. Kollam.

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

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**ORDER**

A Revision Application No. 195/155/SZ/2017-RA dated 15.03.2017 has been filed by M/s Safil Industries Pvt. Ltd., Kollam (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 08/2014-CE dated 07.01.2014, passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicants herein against the Order-in-Original No. 10/KLM/2012-CE (REBATE) dated 31.10.2012, passed by the Assistant Commissioner of Central Excise, Kollam Division.

2. Briefly stated, the Applicants herein filed a rebate claim, on 21.08.2012, for Rs. 2,49,946/- in respect of duty paid on inputs used in the manufacture of exported goods. On examination of the rebate claim, the original authority found that the claim was not admissible as the duty was not paid on the goods exported and the proof of export was not submitted. Accordingly, the claim was rejected vide the aforementioned Order-in-Original dated 31.10.2012, after following the principles of natural justice. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals). The Applicants herein, thereafter, appear to have filed an appeal against the aforesaid Order-in-Appeal dated 07.01.2014 before the CESTAT, which has been rejected by the CESTAT, Bengaluru, vide Final Order No. 20102/2017 dated 19.01.2017, as not maintainable.

3. The Revision Application has been filed, mainly, on the grounds that the Applicants have claimed rebate in respect of duty paid on inputs used in the manufacture of goods exported; that, therefore, rebate claim was admissible even though finished goods which were exported were not duty paid; that the conditions of Notification No. 19/2004-CE (NT) dated 06.09.2004 were strictly followed, "except in few cases where the conditions were of lesser magnitude"; that admittedly there was no mention on the ARE-2 filed by the Applicants about the relevant rules and notifications but this was due to no mention of any rule or notification in the specimen format; that the permission granted by the Assistant Commissioner, as contemplated in the CBEC's Central Excise Manual and Notification No. 21/2004-CE(NT) dated 06.09.2004, was not mentioned but the due permissions had already been obtained; that the bill of export/CT-1 was not submitted as being manufacturer exporter they were not required to do so; and that the copies of the shipping bills/bills of lading were submitted.

4. Personal hearing in the matter was fixed on 03.01.2023 and 18.01.2023. In response to the notice for the hearing fixed on 18.01.2023, a request for adjournment was received on behalf of the Applicants herein. Therefore, the matter adjourned to 01.02.2023. However, in response, another request for adjournment was received and the case was ultimately posted for hearing on 06.02.2023, as requested by the Applicants. No one appeared for the Applicants on any of the dates fixed for hearing. In the hearing held,

in virtual mode, on 06.02.2023, Sh. Pradeep Kumar, AC appeared for the department and supported the orders of lower authorities. He highlighted that the goods exported were cleared without payment of duty. Proof of export has also not been submitted. After the conclusion of hearing held on 06.02.2023, an email was received from the Counsel for the Applicants claiming that he could not join the hearing due to a technical difficulty at his end. However, as sufficient opportunities have already been granted, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. At the outset, following is observed:

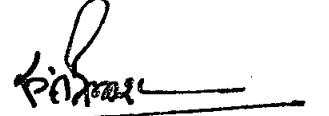
- (i) The revision application does not indicate the date of communication, to the Applicants, of the Order-in-Appeal impugned herein.
- (ii) The revision application has not been filed in the prescribed form EA-8.
- (iii) The revision application has been filed without requisite Court fee stamps being affixed on the application as well as on the Orders of the authorities below.

The above deficiencies have been brought to the notice of the Applicants herein for rectification, vide letters dated 21.03.2017, 14.12.2022, 16.12.2022, 20.12.2022, 03.01.2023 and 18.01.2023. However, these have not been rectified till date. Therefore, it is apparent that the present revision application is a frivolous attempt and the Applicants themselves are not serious in pursuing it.

5.2 Further, the impugned Order-in-Appeal was issued on 07.01.2014, whereas the revision application has been filed on 15.03.2017, i.e., after a gap of more than three years. Section 35EE (2) of the Central Excise Act, 1944, provides that a revision application is required to be made within three months from the date of communication to the applicant of the order against which application is being made. As per proviso thereof, the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months. Therefore, the revision application has been filed much beyond the limitation period prescribed under Section 35EE, including the condonable period. It is observed that the Applicants had, in the interim, filed an appeal before the CESTAT which has not been found to be maintainable as the matter relates to rebate of Central Excise duties paid. It is settled that the period spent in pursuing remedy in wrong forum can be considered to be excluded from the limitation period prescribed by law, in accordance with the principles of Section 14 of the Limitation Act, 1963 [Ref. MP Steel Corporation vs. Commissioner of Central Excise {2015 (319) ELT 373 (SC)}]. However, for this purpose the Applicants have to make such a request and have to prove that the abortive proceedings before the wrong

forum had been "prosecuted with due diligence and in good faith" [Ref. Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department (2008 7 SCC 169)]. In the case of M/s Ujjaal Transport Agency & others (Indian Kanon Document No. 1747454) also, 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 bona fide and with due diligence pursuing the remedy before a Court without jurisdiction". In the present case, nothing is forthcoming from the Applicants establishing that they were bona fide and with due diligence pursuing the remedy in the wrong forum i.e. CESTAT. In fact a request to exclude the period spent in pursuing abortive remedy before wrong forum, i.e., CESTAT, itself has not been made. In this light, it has to be held that the instant revision application is barred by limitation.

6. The Revision Application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Safil Industries Pvt. Ltd.,  
Madanthacode, Nellimukku,  
P.O., Kareepra,  
Kollam-691509, Kerala.

G.O.I. Order No. 56/23-CX dated 01-02-2023

Copy to:

1. The Commissioner of Central Goods & Service Tax, Thiruvananthapuram, GST Bhavan, P.B. No. 13, Press Club Road, Thiruvananthapuram-695001.
2. The Commissioner of Central Excise, Customs & Service Tax (Appeals), C.R. Building, I.S. Press Road, Cochin-18.
3. Sh. B.R. Nair, Manoj Pillai & Chitra Pillai, Advocates, M/s. Taxaide, "Kalyan", T.C. 26/1747, Uppalam Road, Trivandrum-695001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



Narendar Kumar Singh  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
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