

SPEED POST



F.No. 195/11/2016-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. 20/10/22

Order No. 60/22-Cx dated 20-10-2022 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.231/2015 (CXA-I) dated 28.10.2015 passed by the Commissioner of Central Excise (Appeals-I), Chennai.

Applicant : M/s Bhotika Trade and Services(P) Ltd., Mumbai .

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

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ORDER

A Revision Application No. 195/11/2016-RA dated 25.01.2016 has been filed by M/s Bhotika Trade and Services(P) Ltd., Mumbai (hereinafter referred to as the Applicant) against the Order-in-Appeal No.231/2015 (CXA-I) dated 28.10.2015 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. 08/2014 (R) dated 30.06.2014, passed by the Assistant Commissioner of Central Excise , Tambaram-II Division.

2. Brief facts of the case are that the Applicant is a Merchant Exporter engaged in exporting goods on behalf of M/s Lincoln Electric Company (India) Pvt. Ltd., Chengalpattu. They filed a rebate claim for an amount of Rs. 1,36,477/- for rebate of duty paid on the goods exported vide ARE-1 No.001 dated 16.08.2012 with the jurisdictional Central Excise authority who rejected it, as time barred, vide Order-in-Original No. 08/2014(R) dated 30.06.2014. The Applicant herein preferred an appeal before the Commissioner (Appeals) who, vide the impugned O-I-A, upheld the OIO and rejected the appeal.

3. The revision application has been filed, mainly, on the grounds that the rebate claim was filed well within the statutory time limit of one year from the date of export of goods but before the wrong forum. Further the rebate application was filed inadvertently before the "Pay & Accounts Officer, Chennai III Commissionerate" which was received and acknowledged by the Pay & Accounts Officer instead of "The Assistant Commissioner of Central Excise , Tambaram-II Division, Chennai-III

Commissionerate". The rebate claim filed with the Pay & Accounts Officer was forwarded to the Division office on 03.09.2013. Thus, the original date of filing rebate claim before the wrong forum being the Commissionerate office should be considered for computing the period of one year.

4.1 Personal hearing, in virtual mode, was held on 19.10.2022. Sh. M. Karthikeyan, Advocate, appeared for the Applicant and stated that the claim was filed on 13.08.2013 (i.e. within time) in the Pay and Accounts office and was thereafter internally transmitted to the Division office on 03.09.2013. Therefore, the date of filing in the PAO office should be taken as the date of filing of the claim. Hence, it is not time barred. He relied upon the decisions in 2020(374) ELT 222 (Del) and 2011(21) STR 367 (Guj) in support of his contentions. He also undertook to furnish the proof of payment of RA fee immediately. No one appeared for the respondent department nor any request for adjournment has been received. It is therefore, presumed that the department has nothing to add in the matter.


4.2 After the hearing, an email dated 19.10.2022 (02:18PM) has been received wherein the Applicant has claimed that they are not required to pay any RA fee since the case pertains to rebate claim. The decision of CESTAT in Glyph International Ltd. {2013 (31) STR 430 (Tri-LB)} affirmed by Hon'ble Allahabad High Court in 2014 (35) STR 30 (All.) has been cited in support.

5.1 The Government has examined the matter carefully. RA fee has not been paid by the applicant citing the orders in Glyph International Ltd. (supra). The Government finds that the said orders are in respect of fee payable for appeals filed before CESTAT regarding Service Tax refunds. The decisions, therefore, do not cover the case of Application Fee to be paid in respect of revision applications filed under Section 35 EE.

5.2 On merits, the Commissioner (Appeals) has rejected the appeal as time barred by holding that PAO is not the proper authority to receive the rebate claim pertaining to Central Excise and the delay in filing the claim to the concerned authority was caused by the appellant i.e. the Applicant herein. The Government observes that Commissioner (Appeals) in the impugned O-I-A, at para 9, has observed that "It is seen that, in spite of the claim was correctly addressed to the Proper Officer, it was negligently submitted to EPAO, Chennai 34 and got acknowledged by them. Since because the Pay & Accounts Office belong to all Central Excise Offices, Chennai is housed at the same building where Chennai-III Commissionerate is also situated, the Appellant took the advantage of misinterpreting the issue and made various contrary statements". The Applicant herein has relied upon the judgment of Hon'ble Delhi High Court in the case of Sun Pharmaceutical Industries Ltd., Vs Union of India {2020(374)E.L.T. 222(Del)} and that of Hon'ble High Court of Gujarat in the case of CCE Vs AIA Engineering Ltd. {2011(21) S.T.R. 367 (Guj)} to assail these findings of Commissioner (Appeals). The Government observes that both in the case of Sun Pharmaceuticals and AIA Engineering, the refund applications were addressed to wrong forum/authorities

under a mistaken belief. On the other hand in the present case, the rebate application is addressed to the correct authority but it has been submitted in wrong office, which is ⁱⁿ no way concerned with the matter. Thus, the Applicant was clearly aware of the correct authority before whom the claim was to be filed but submitted it in a wrong office and thereafter made several contradictory statements , as brought out in the impugned OIA. As such, the facts of the present case are different from those in Sun Pharmaceuticals and AIA Engineering. In this light, the Government does not find it to be a fit case for revision.

6. The revision application is rejected for the reasons aforesaid.

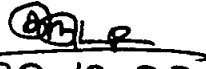

 (Sandeep Prakash)
 Additional Secretary to the Government of India

M/s Bhotika Trade and Services(P) Ltd.,
 505, Laxmi mall, Laxmi Industrial Estate,
 New Link Road, Andheri(W), Mumbai-400053.

Order No. 60/22-Cx dated 20-10-2022

Copy to:

1. Commissioner of Central Excise (Appeals-I), Central Excise building, 26/1, Mahatama Gandhi Road, Nugambakkam, Chennai-600034.
2. Commissioner of CGST & Central Excise, Chennai Outer, No.2054-III Avenue, 12th Main Road, Newry Towers, Anna Nagar, Chennai-600034.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED 
 20-10-22

(लक्ष्मी राघवन)
 (Lakshmi Raghavan)
 अधुभाग अधिकारी / Section Officer
 वित्त मंत्रालय (राजस्व विभाग)
 Ministry of Finance (Deptt. of Rev.)
 भारत सरकार / Govt. of India
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