

SPEED POST



F. No. 195/113/SZ/2018-RA
F. No. 195/114/SZ/2018-RA
F. No. 195/18/SZ/2019-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. 28/3/23

Order No. 67-69/2023-CX dated 28.3.2023 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 Applications filed, under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal Nos. 48/2015-CE dated 30.01.2015 & 634/2014-CE dated 31.10.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore & 495/2017-CT dated 05.12.2017 passed by the Commissioner of Central Tax (Appeals-II), Bangalore.

Applicant : M/s Maini Precision Products Pvt. Ltd., Bengaluru.

Respondents : The Commissioner of CGST & Central Excise, Bengaluru (South) &
The Commissioner of CGST & Central Excise, Bengaluru (North-West)

ORDER

Three Revision Applications Nos. 195/113/SZ/2018-RA dated 08.06.2018, 195/114/SZ/2018-RA dated 08.06.2018 & 195/18/SZ/2019-RA dated 14.02.2019 have been filed by M/s Maini Precision Products Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 48/2015-CE dated 30.01.2015 & 634/2014-CE dated 31.10.2014, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru & 495/2017-CT dated 05.12.2017, passed by the Commissioner of Central Tax (Appeals-II), Bangalore. The Commissioner (Appeals-I) has, vide the impugned Orders-in-Appeal dated 31.10.2014 & 30.01.2015, upheld the Orders-in-Original Nos. 159/2013 dated 25.11.2013 & 97/2013 dated 28.06.2013, passed by the Assistant Commissioner of Central Excise, Bangalore-III Division, Bangalore. The Commissioner (Appeals-II) has, vide the impugned Order-in-Appeal dated 05.12.2017, upheld the Order-in-Original No. 57/2015 dated 30.03.2016, passed by Deputy Commissioner of Central Excise, Peenya-I Division, Bangalore.

2. Brief facts of the case are that the Applicants herein are manufacturers of Fork lift parts (843121010), parts of Mechanical Appliances (84859000), Internal Combustion parts (84099909), Diesel Engine and Engine Parts (84099909) etc.. During the periods 2010-11 & 2011-12, it was found by the department that the Applicants exported excisable goods on payment of duty under claim of rebate. However, sale proceeds in respect of some of the exports were not received and the Applicants wrote them off as 'bad debts' in their book of accounts. Therefore, show cause notices were issued for recovery of the rebate of duty corresponding to the export proceeds written off as 'Bad debts' under Section 11A of the Central Excise Act, 1944, along with the applicable interest. The demands so raised were confirmed by the lower authorities and penalties were also imposed, under Rule 27 of the Central Excise Rules, 2002/Section 11AC of the Act *ibid*. Details are as follows:

S. No.	RA No. & Date	OIO No. & Date	OIA No. & Date	Amt. involved (in Rs.)	Penalty Involved (in Rs.)
1.	195/113/SZ/2018 Dt. 08.06.2018	159/2013 Dt. 25.11.2013	48/2015-CE dt. 30.01.2015, passed by Commr (Appeals-I)	1,81,420/-	5,000/-
2.	195/114/SZ/2018 Dt. 08.06.2018	97/2013 Dt. 28.06.2013	634/2014-CE dt. 31.10.2014, passed by Commr (Appeals-I)	4,78,256	5,000/-
3.	195/18/SZ/2019 Dt. 14.02.2019	57/2015 Dt. 30.03.2016	495/2017-CT dt. 05.12.2017, passed by Commr (Appeals-II)	1,19,000/-	1,19,000/-

The appeals, filed by the Applicant herein, have been rejected by the Commissioner (Appeals), vide impugned Orders-in-Appeal. The Applicants herein, thereafter, filed appeals before CESTAT, which have been rejected, as non-maintainable, by CESTAT, South Zonal Bench, Bangalore, vide Final Order Nos. 20321/2017 dated 07.03.2017, 20322/2017 dated 08.03.2017 & 21916/2018 dated 17.12.2018.

3.1 The Revision Applications have been filed, mainly, on the grounds that the Central Excise Act does not provide for recovery of duty on bad debts written off; that the demand is based on information available in Balance sheet; that demand of interest and imposition of penalty is not sustainable; and that the provisions of FEMA are not carried through the provisions of Central Excise Act or the rules made thereunder.

3.2 The Revision Applications are accompanied by miscellaneous applications, requesting for condonation of delay wherein it has been brought out that the Applicants had approached CESTAT with appeals against Orders-in-Appeal impugned herein, which have been rejected as non-maintainable by the CESTAT. Accordingly, condonation of delay has been requested in accordance with Section 14 of the Limitation Act, 1963.

4. Personal hearing in the matter was fixed on 24.03.2023. Sh. Mohammad Ibrahim, Advocate appeared for the Applicant in the personal hearing held, in virtual mode. It was pointed out to him that RA fees have not been paid despite reminders. Sh. Ibrahim submitted that he will verify the position with the client and submit proof of payment by Monday, 27.03.2023. It was also pointed out to him that RA Nos. 195/114/SZ/2018-RA and 195/113/SZ/2018 have been filed on 08.06.2018, i.e., 1 year and 03 months after the CESTAT's orders rejecting their appeals as non-maintainable, whereas, in RA No. 195/18/SZ/2019, the Applicants had approached CESTAT even though their earlier appeals had been rejected by CESTAT as non-maintainable. Sh. Ibrahim submitted that CODs may be decided as per law, on merits. He also reiterated the contents of the respective RAs. 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.

5.1. The Government has carefully examined the matter. In terms of sub-section (3) of Section 35EE of the Central Excise Act, 1944, a revision application "shall be accompanied" by a fee of Rs. 200/- where the amount of duty and interest demanded, fine or penalty levied to which the application relates is Rs. 1,00,000/-or less, and Rs. 1,000/- where it is more than Rs. 1,00,000/-. The subject revision applications have not been accompanied by the requisite RA fees. This was brought out to the notice of the Applicants, vide letters dated 29.08.2019, 21.01.2020 & 15.03.2023. The matter was also brought to the notice of the learned Advocate for the Applicants during the personal hearing held on 24.03.2023,

when the learned Advocate had undertaken to verify the position with the Applicants and submit proof of payment of RA fees by 27.03.2023. There is no response from the Applicants thereafter, nor has any proof of payment of RA fee been placed on record. Therefore, only inference that can be drawn is that RA fees have not been paid. Since payment of RA fee is mandatory for a revision application to be maintained, these revision applications are liable to be dismissed on this ground alone.

5.2.1 RA No. 195/113/SZ/2018-RA has been filed, against the Order-in-Appeal dated 30.01.2015, which was received by the Applicants on 13.02.2015. As per the application for condonation of delay, the appeal before the CESTAT was filed on 11.05.2015/13.05.2015, which was dismissed as non-maintainable on 08.03.2017, in an order pronounced in the open Court. The revision application has been filed on 08.06.2018.

5.2.2 RA No. 195/114/SZ/2018-RA has been filed, against the Order-in-Appeal dated 31.10.2014, which is stated to have been received by the Applicants on 22.11.2014. The appeal before the CESTAT was filed on 04.02.2015, which was rejected as non-maintainable, vide Order dated 07.03.2017. Operative portion of this Order was also pronounced in open Court on 07.03.2017 itself. The revision application has been filed on 08.06.2018.

5.2.3 Revision Application No. 195/18/SZ/2019-RA has been filed against the Order-in-Appeal dated 05.12.2017, which was received by the Applicants on 08.12.2017. The Applicants filed an appeal before the CESTAT on 13.06.2018, which was rejected as withdrawn, vide Order dated 17.12.2018. The revision application has been filed on 14.02.2019.

5.3 It is the contention of the Applicants that the period spent in pursuing the appeal in wrong forum, i.e., CESTAT is excludable from the limitation period, in terms of section 14 (2) of the Limitation Act 1963. 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 applications for condonation of delay have to be considered by the Government, as revisionary authority, by keeping in view the principles of Section 14 of the Limitation Act. However, in the case of RA Nos. 195/113-114/SZ/2018-RA, it is observed that even if the Government were to be persuaded to exclude the time spent in


pursuing the appeal in wrong forum, i.e., CESTAT, the revision applications have still been filed almost one year and three months after the dismissal of appeals by the CESTAT. As per sub-section (2) of Section 35EE *ibid*, a revision application shall be made within three months from the date of communication of the order against which application is being made provided that 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, a revision application can be filed within a maximum period of 06 months, including the condonable period of 03 months. In the case of said two RAs, even after excluding the period spent in pursuing the remedy before the wrong forum, i.e., CESTAT, the revision applications are filed much beyond the limitation period, including the condonable period. Therefore, these revision applications are liable to be dismissed as time barred as well.

5.4.1 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., bonfide, and, therefore, should not be guilty of negligence, lapse or inaction. In respect of RA No. 195/18/SZ/2019-RA, the appeal before the CESTAT was filed on 13.6.2018 when the earlier appeals filed in matters involving identical issues had already been dismissed by the CESTAT, on 07.03.2017 and 08.03.2018, as non-maintainable. Therefore, it is apparent that the appeal in CESTAT was filed and pursued till its withdrawal on 17.12.2018 despite the Applicants being fully in the know that the appeals in such matters are not maintainable before CESTAT. It can be argued that the Applicants herein had, on their own, withdrawn the appeal before CESTAT and, hence, had shown diligence and good faith. However, as already indicated, the appeal before CESTAT was filed on 13.06.2018, when earlier appeals had already been dismissed on 07.03.2018 & 08.03.2018, i.e., the appeal in the instant case was filed despite being aware for about 01

year and 03 months that appeal in such matters is not maintainable before CESTAT. Therefore, its withdrawal after 06 months of filing cannot impart any bonafide to the Applicants. As such, filing and pursuing of appeal before the CESTAT in this case is a serious lapse indicating negligence and inaction on part of the Applicants herein.

5.4.2 In view of the above, the benefits of principles of Section 14 of the Limitation Act cannot be extended in the case of RA No. 195/18/SZ/2019-RA. Hence, this RA is also liable to be dismissed on the grounds of limitation.

6. The revision applications are rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s Maini Precision Products Ltd.,
B-165, 3rd Cross, Peenya Industrial Estate,
Peenya, Bangalore-560058.

2. M/s Maini Precision Products Pvt. Ltd.,
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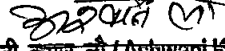
G.O.I. Order No. 67 - 69 /23-CX dated 28.3.2023

Copy to:

1. The Commissioner of CGST & Central Excise (South), C.R. Building, Queen's Road, Bengaluru-560001.
2. The Commissioner of CGST & Central Excise (North-West), 2nd Floor, BMTC Bus Stand, Complex, Shivaji Nagar, Bengaluru-560051.
3. The Commissioner of Central Goods & Service Tax (Appeals-I), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand , HAL Airport Road, Domaluru, Bengaluru- 560071.
4. The Commissioner of Central Goods & Service Tax (Appeals-II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand , HAL Airport Road, Domaluru, Bengaluru- 560071.
5. M/s Lakshmikumaran & Sridharan, World Trade Centre No. 404-406, South Wing, Brigade Gateway Campus, No. 26/1, Dr. Rajkumar Road, Malleshwaram West, Bangalore-560055.
6. PPS to AS (RA).
7. Guard file.
8. Spare Copy.

9. Notice Board.

ATTESTED



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