

SPEED POST



F.No.195/81-82/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...15/03/24

Order No. 08-09/2024-CX dated 15-03-2024 of the Government of India, passed by Ms. Shubhagata Kumar, 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. 301-302/2018 CT dated 07.08.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s Essentra India Pvt. Ltd, Bengaluru.

Respondent : The Commissioner of CGST, Bengaluru(North-West).

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ORDER

Two Revision Applications, bearing Nos. 195/81/SZ/2019-RA dated 25.03.2019 and 195/82/SZ/2019-RA dated 25.03.2019 have been filed by M/s Essentra India Pvt. Ltd, Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 301-302/2018 CT dated 07.08.2018, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide impugned Orders-in-Appeal, upheld the Order-in-Original No. 89/R/2017 dated 21.11.2017 and 16/R/2018 dated 23.01.2018 respectively, both passed by the Assistant Commissioner of Central Tax, NWD-1 Division of CGST Commissionerate-Bengaluru (North-west). As both the revision applications involves the same applicant and respondent and the issue involved is common, both have been taken up for disposal together.

2. Briefly stated, the Applicants herein are manufacturers of Printed and self-Adhesive Tear Tapes falling under CETH 39191000 of the Central Excise Tariff Act, 1985. They had filed rebate claims as per the following details:

(i) 195/81/SZ/2019-RA: The Applicant filed a cumulative rebate claim of Rs. 1,16,74,084/- for the goods exported by them under ARE-1s during the period 26.09.2016 to 30.01.2017. After the due process of law, the lower Adjudicating authority vide OIO No.89/R/2017 dated 21.11.2017 sanctioned an amount of Rs.1,04,61,758/-, whereas, an amount of Rs. 12,12,323/- was rejected. The reason assigned by the lower Adjudicating Authority for rejecting the claim amounting to Rs.12,12,323/- was that sale proceeds in

respect of the goods exported were short received and, thus, rebate claim corresponding to short realization of BRC was rejected.

Aggrieved, the Applicants preferred an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide OIA No. 301-302/2018 CT dated 07.08.2018 and held that as per RBI guidelines issued by RBI/2014-15/309/AP(D/R) series Circular No.37 dated 20.11.2014, the period of realization and repatriation of export proceeds is nine months from the date of export. It can be further extended by three months. It was further held by the Commissioner (Appeals) that as per the provisions of Foreign Exchange Management Act, the exporter is bound to receive the foreign exchange towards export of goods and services, thus, there is violation of RBI Guidelines and FEMA Act. Since there were violation of FEMA Act and RBI Regulations, the export has become prohibited. It was further held by the Commissioner (Appeals) that Para 2(g) of notification 19/2004-CE(NT) dated 06.09.2004 stipulates that "the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made. Accordingly, the Commissioner (Appeals) finally held that lower Authority has rightly rejected the rebate claim of Rs. 12,12,323/- on those consignments where the sales proceed were not received and upheld the OIO.

(ii) 195/82/SZ/2019-RA: The Applicant filed a cumulative rebate claim of Rs. 8,46,886/- for the goods exported by them under ARE-1s dated 30.09.2016 & 30.12.2016. After the due process of law, the lower Adjudicating authority vide OIO No.16/R/2018 dated 23.01.2018 sanctioned an amount of Rs.2,95,760/-, whereas, an amount of Rs. 5,51,126/- was rejected. The reason assigned by the lower Adjudicating Authority for rejecting the claim

amounting to Rs.5,51,126/- was that sale proceeds in respect of the goods exported were received short ,thus, rebate claim corresponding to short realization of BRC is rejected.

Aggrieved, the Applicants preferred an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide OIA No. 301-302/2018 CT dated 07.08.2018 and held that as per RBI guidelines issued by RBI/2014-15/309/AP(D/R) series Circular No.37 dated 20.11.2014, the period of realization and repatriation of export proceeds is nine months from the date of export. It can be further extended by three months. It was further held by the Commissioner (Appeals) that as per the provisions of Foreign Exchange Management Act, the exporter is bound to receive the foreign exchange towards export of goods and services, thus, there is violation of RBI Guidelines and FEMA Act. Since there were violation of FEMA Act and RBI Regulations, the export has become prohibited. It was further held by the Commissioner (Appeals) that Para 2(g) of notification 19/2004-CE(NT) dated 06.09.2004 stipulates that "the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made. Accordingly, the Commissioner (Appeals) finally held that lower Authority has rightly rejected the rebate claim of Rs. 5,51,126/- on those consignments where the sales proceed were not received and upheld the OIO.

3. The Revision Applications has been filed, mainly, on the grounds that in terms of Rule 18 of the Central Excise Rules, 2002 or the notifications issued thereunder, there is no requirement of any realization of exports proceeds. The Applicant relied upon the decision of Hon'ble High Court of Allahabad in the case of M/s Jubilant Life Science vs Union of India {2016 (341) ELT 44 (All)}. Further it has been submitted that Non realization of

export proceeds does not in itself make the export goods prohibited as Foreign Exchange Management Act,1999 and the guidelines issued by RBI permits non realization/short realization of export proceeds under certain conditions.

4. Personal hearing in the matter was held on 10.01.2024. Sh. Jayaram Hiragange, Advocate appeared for the Applicants. Sh. Hiragange submitted that the Commissioner (Appeals) has rejected their rebate claim in the OIA by erroneously relying on a case that is not applicable in their case. He quoted order No.696-699-CX dated 24.12.2018 passed by the G.O.I where the Revisionary Authority has held that realization of proceeds cannot be a precondition for granting rebate; that taxes should not be exported; that many cases such as Jubilant Life Sciences, SRF case of 2022 etc. support their case; that there is no FEMA violation for which para 2(g) could be invoked and therefore their application should be allowed by setting aside the OIA. No one appeared for the Respondent department nor has any request for adjournment etc. been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter. At the outset, it is observed that the Orders-in-Appeal impugned herein were received by the Applicants on 28.09.2018 whereas the subject RAs have been filed on 25.03.2019. Thus, these RAs have been filed after a delay of 87 days after the normal period of filing the RAs i.e. 3 months from the date of communication of the order. The applicants have also submitted an application for condonation of delay.

As per sub-section (2) of Section 35EE of the Central Excise Act, 1944:

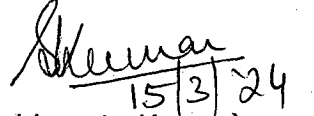
"(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

***Provided** that the Central Government may, if it is satisfied that the applicant 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."*

Thus, a revision application is required to be made within a period of three months from the date of communication of the order against which application is being made and the Government, upon sufficient cause being shown, can condone the delay upto a further period of three months. In the present case, the Applicants submit that "***the delay is due to the fact that the order was received by the person who was not handling tax matters and intimated the receipt of the order very late***". The Government observes that in this case the reason put forth for the delay is rather vague. It indicates that the Applicants do not seem to have proper systems in place to ensure that communication related to revenue and financial matters is properly dealt with. If delay is condoned for such reasons as the Order in Appeal falling into the wrong hands, the provision for condonation of delay would be taken rather lightly and due care would not be taken by Applicants to adhere to the timelines prescribed under law. No evidence has been put forth to establish any reason which was beyond the control of the Applicants and which prevented them from filing the application within the time limit. Therefore the government holds that "sufficient cause" has not been demonstrated in this case as

required by Section 35EE of the Central Excise Act, 1944 and the reason cited for delay is neither convincing nor acceptable.

6. In view of the above, the Government is constrained to reject the subject revision applications on the grounds of limitation without traversing the merits of the case.



(Shubhagata Kumar)

Additional Secretary to the Government of India

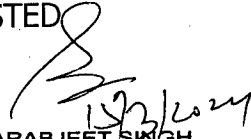
M/s Essentra India Pvt. Ltd.,
#3(Old Plot No.18&23),3rd Main Road,
Phase-I, Peenya Industrial area,
Yeshwantpur,Hobli-Peenya,
Bengaluru-560058.

G.O.I. Order No. 08-09/24-CX dated 15-03-2024

Copy to:

1. The Commissioner of Central Goods & Services Tax (North West), 2nd Floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru-560051.
2. The Commissioner of Central Tax (Appeals-II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand, Domluru, HAL Airport Road, Bengaluru-560071.
3. Sh. Jayaram Hiregange, Advocate, No. 6, 3rd Main, Kumarapark West Bengaluru-560020.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



सरबजीत सिंह / SARABJEET SINGH
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