

SPEED POST



F.NO. 195/18/SZ/2021-R.A.
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.. 6/10/23

Order No. 89/ 2023-CX dated 06/10. 2023 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. 82/2014 (M-IV) dated 23.09.2014 passed by the Commissioner of Central Excise (Appeals), Chennai.

Applicant : M/s Vishay Transducers India Pvt. Ltd., Chennai.

Respondent : Commissioner of Central Goods & Service Tax (South), Chennai.

ORDER

A revision application no. 195/18/SZ/2021-R.A. dated 14.12.2021 has been filed by M/s Vishay Transducers India Pvt. Ltd., Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 82/2014 (M-IV) dated 23.09.2014 passed by the Commissioner of Central Excise (Appeals), Chennai whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 01/2013 dated 10.01.2013 passed by the Assistant Commissioner, Perungudi Division of Central Excise of erstwhile Central Excise Commissionerate, Chennai-IV.

2. Briefly stated, the Applicant was registered with Central Excise department for manufacture of "Load cells" falling under Chapter 90 of the First Schedule of the Central Excise Tariff Act, 1985. During the period Dec, 2011 to Feb, 2012 they cleared their goods to M/s Vishay Precision Transducers Pvt. Ltd., Sipcot Hitech SEZ, Oragadam without payment of duty under Letter of Undertaking. The Applicant closed their unit/operation during May, 2012. As credit was lying unutilised in their Service Tax Credit Account and Cenvat Credit Account, the Applicant preferred to claim rebate on the clearances made to above SEZ, by debiting duty of Rs. 1,86,54,000/- in Service Tax Credit Account and Rs. 10,26,881/- in Cenvat Credit Account and paid the interest of Rs. 10,05,213/- vide e-payment on 14.06.2012. Consequently, they filed 25 rebate claims totalling of Rs. 1,97,00,869/-. As the Applicants had not satisfied the condition 2(a) of Notification No. 19/2004 -CE(NT) dated 06.09.2004 which stipulated that " the excisable goods shall be exported after payment of duty directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general order or special order", the Applicants were issued with a Show Cause Notice No. 8/2012 dated 08.08.2012, wherein, they were asked to show cause as to why their rebate claim should not be rejected for not complying with condition 2(a) of Notification No. 19/2004 -CE(NT) dated 06.09.2004.

After due process of law, the said rebate claims were rejected vide Order-in-Original No. 01/2013 dated 10.01.2013. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals). The commissioner (Appeals) held that the Appellant (Applicant herein) failed to comply with the requirements of the

Notification at the time of export. The Commissioner (Appeals) also held that "*refund of unutilized Cenvat credit shall be granted in two circumstances. Suppose credit pertaining to inputs used in export goods cleared without payment of duty is accumulated and is unutilized, then refund is admissible. Suppose an assessee, for some reason, was prohibited by the department to utilize the credit during the material time and forced to pay duty in cash. Subsequently, if it held that credit was admissible to the assessee at the relevant time, but now they were not able to utilize the same, then in such a situation, appellate forums can direct the department Refund Sanctioning Authority to grant cash refund of such unutilized credit. Except under the above two situations, there is no provision to grant cash refund of unutilized credit on account of closure of factory.*" The Commissioner (Appeals) further held that "*The Appellant (Applicant herein) does not fit into both the situations enumerated above. It is an undisputed fact that they neither paid duty while clearing the goods for export in terms of rule 8 of Central Excise Rules, 2002 nor reflected the same in their ER1 returns for claiming rebate in terms of Rule 18 of Central Excise Rules, 2002. It is only an afterthought that they decided to take refund of the unutilised credit on closure of factory by filing rebate claims after making debits in their account on their own, not under any law which authorises them to do so. The contention of the Appellant (Applicant herein) that they paid interest for such delayed payment of duty, thereby compensated the loss to the Government and hence the rebate ought to have been sanctioned is not accepted at all.*" Accordingly, he rejected the appeal and upheld the order of the original authority.

3. The revision application has been filed, mainly, on the ground that the learned Commissioner(Appeals) ought to have known that in respect of Incentive Oriented Beneficial Schemes, intended to boost export and where substantive fact of export is not in doubt, liberal interpretation is to be accorded in cases of technical lapses and that the procedural infraction of Notification/circulars are to be condoned, if exports have really taken place and that the substantive benefit cannot be denied on procedural lapses, so that the very purport of the section is not defeated as held in the reported decisions of the Apex Court in 1989(39)E.L.T. 503 (Suksha

International Vs. Union of India), 1983 (13) E.L.T. 1534 (Union of India Vs. A.V. Narasimhalu) and 1995 (77) E.I.T 511 (Formica India division Vs. Collector of Central Excise).

4.1. Personal hearing, in virtual mode, was held on 06.09.2023. Sh. J.V. Niranjana, advocate appeared on behalf of the applicants. On the point related to limitation in respect of the application, he stated that though the OIA was passed in 2014, he has received it only on 22.09.2021, for which he would submit documentary evidence within a week or ten days. On merits, he stated that his case is identical to Ford India case cited; that though commissioner (Appeals) has dismissed his case on the grounds that Ford India case relates to inputs and not finished goods, actually the goods in that case were CKD kits of cars which are distinct from inputs. He submitted that when export is not disputed, duty and interest etc. have been paid, his clients are legitimately entitled to rebate. On the question of time taken to file, he submitted that the company had a change of personnel and the claims were filed after the fact came to light through an auditor's query; that he would make some written submissions within a week/ten days. None appeared from the respondent department's side.

4.2. Vide an e-mail communique dated 21.09.2023, counsel of the Applicant forwarded written submissions, wherein, on merits of the case, grounds of revision application were reiterated along with copies of case laws cited in support in the revision application. Vide Annexure-IV to the said communique, he submitted a photocopy of an envelope sent by Despatcher, O/o the Commissioner of Central tax (Appeals-III), Newry Towers, 2nd floor, Plot no.2054, I Block, II Avenue, 12th Main Road, Anna Nagar, Chennai-600040. No addressee was found to be appearing on this envelope. However, it bore a date as 16.09.2021.

4.3. The Respondent department in the appeal as well as in this application vide an e-mail communique dated 21.09.2023 submitted that the impugned Order-in-Appeal i.e., 82/2014(M-IV) dated 23.09.2014 was received by them on 07.10.2014 and the same was accepted by the Committee of Commissioners on 15.12.2014/ 07.01.2015.

4.4. In view of this, another personal hearing, in virtual mode, was held on 22/09/2023. Shri Niranjana, Advocate, appeared on behalf of the Applicant and Assistant Commissioner (Review) and Superintendent (Appeals) attended on behalf of the Respondent Department. Shri Niranjana stated that he has forwarded the correspondence made by him with the AS(RA), Mumbai office, regarding the receipt of the Order-in-Appeal. Upon being asked, when the Applicants had changed their address from Karapakkam to Nungambakkam, and informed the department about the same, he stated that he did not know and would have to ask the Applicants. Upon being told that the copy of Order-in-Appeal enclosed in their Writ Petition clearly shows a stamp of despatch and signed date as 25.09.2014, he said that he was not aware of the same and would inform the revisionary authority after seeking clarity from the Applicants. He was given time, as requested by him, to submit the required information. Upon being asked why the matter was not taken up between 2014-2019, i.e., a span of 5 years, he stated only that the Applicants had informed him that the dealing personnel, staff etc. had changed and that he would also respond on this point in the given additional time. No response on the above points was received till date on the matter.

5.1. The Government has examined the matter carefully. From the perusal of material placed on record, it is observed that the impugned OIA challenged in the instant revision application was passed by the appellate authority on 23.09.2014. However, the revision application has been filed on 14.12.2021. Thus, the revision application has been filed almost after more than 7 years. The Government observes that the applicant has not submitted any application for condonation of delay along with the instant revision application. Rather the Applicant have submitted that they received the impugned OIA on 22.09.2021 and therefore the revision application filed by them is well within the statutory time fixed for this purpose. From the material placed on record and submissions of Sh. Niranjana, counsel of the Applicant during the personal hearing held on 06.09.2023, the Government further observes that the Applicants were admittedly aware of the fact that the impugned OIA has been passed in 2014. Further, it is imperative to note here that the Applicants were

provided ample opportunity to explain the inordinate delay in filing the revision application during the personal hearing held on 22.09.2023. On which this revisionary authority was assured by the Applicant's counsel that he would revert back by the evening of 26th September, however, it is noticed that no response to this effect was received by this authority till date.

On this issue, the Government observes that in the affidavit filed by the Applicant before the Hon'ble High Court of Madras in Writ Petition No.20107 of 2023 and also placed on record in the instant revision application, the Applicant have averred that till 25.09.2019 they had been orally requesting the office of Commissioner (Appeals) to provide them copy of the impugned OIA. The first written request to this effect was made vide letter dated. 25.09.2019 i.e. after 5 years of passing of the impugned OIA. It is difficult to accept that a prudent company, despite having attended the P.H. would not take up the matter in writing for a period of 5 years and that too, for a matter which involves a substantial sum of around Rs. 2 crores, if the order was not indeed received by them. The Government is constrained to note that the Applicants instead of acting with alacrity, adopted a lackadaisical approach, and admittedly took action only when an auditor made a query in this matter.

5.2. The Government further observes from a copy of the OIA enclosed in the Applicants' W.P that the OIA bears a despatch stamp and a signed date of 25.09.2014. Further, the respondent department which was respondent in the appellate proceedings too, has submitted vide letter dated 21.09.2023 that they received their copy of the impugned OIA on 07.10.2014. This indicates that the impugned OIA was despatched to both the appellant (Applicant herein) and the respondent. Despite being specifically asked during P.H and having got additional time to submit additional information, and/or explanation for a lapse of 5 years, the Applicants have not been able to submit any satisfactory explanation in the matter nor submit any document to establish what they did in the matter from 2014 to 2019.

5.3 In this regard, I place reliance upon the following:- In the case of Bharat Nandlal Kalyani Vs Collector of customs (Prev) reported vide 1988 (36) E.L.T. 645 (Tribunal), it was held that delay is not condonable when there is no *bona fide* in the application and delay not satisfactorily explained. Hon'ble Apex Court dismissed the special leave petition filed by Bharat Nandlal Kalyani against the tribunal order reported vide 1997 (94) E.L.T. A251(S.C). The said order of Hon'ble Apex Court was relied upon in the case of Derby Textiles Ltd. vs Commissioner of Central Excise, Jaipur reported vide 2005 (191)E.L.T. 672 (Tri- Del.). Special Leave Petition filed by Derby Textiles Ltd. too was dismissed as reported vide 2006 (193) E.L.T. A57 (S.C). Further Hon'ble High Court of Telangana in the case of Meridian Promoters Pvt. Ltd. Vs Commissioner of Central Excise & Service Tax, Visakhapatnam reported vide 2019 (368) E.L.T. 64 (Telangana) held that "*if contention of assessee that delay not a relevant factor accepted, it would enable any person to prefer appeal after several decades rendering object of prescribing limitation period illusory and redundant*". Special Leave Petition filed by the assessee against the judgment of Hon'ble Telangana High Court was dismissed by the Hon'ble Apex Court as reported vide [Meridian Promoters Pvt. Ltd. Vs Commissioner -2019 (368) E.L.T. A36 (S.C.)]. Thus, the Government is constrained to conclude that the Applicants were aware of the appellate proceedings and instead of acting with alacrity, they have been lackadaisical and now in order to rectify the situation, they have tried to establish that they did not receive the order for more than 5 years which is difficult to accept as explained above. In light of the above circumstances, the Government observes there is an inordinate and unexplained delay in filing the instant revision application which does not appear to be bona-fide.

5.3 Further, letter dated 25.08.2023 was also sent to the Applicants and their counsel informing them that no request for condonation of delay has been submitted by them. However, no response in this regard has been received from the Applicants.

6. In light of the facts discussed above and the case laws discussed (supra), the Government observes that delay in filing application has not been satisfactorily explained and the contention that Applicants did not receive the OIA for 5 years is not *bona fide*. Accordingly, in the overall facts and circumstances of the case, the Government holds that the inordinate delay in filing the instant RA, i.e. 7 years, does not deserve leniency. Hence, without traversing the merits of the case, the Government holds that the instant revision application is time barred and, as such, is non-maintainable.

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

Shubhagata Kumar
6/10/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. M/s Vishay Transducers India Pvt. Ltd.,
"NAWAZISH", Unit 2B, II floor, 30/17,
Khader Nawaz Khan Road,
Chennai-600006.
2. M/s. Vishay Transducers India Pvt. Ltd.,
117, Old Mahabalipuram Road,
Karapakkam, Chennai-600097.

G.O.I. Order No. 89/23-CX dated 06/10/2023

Copy to: -

1. Commissioner of Central Goods & Service Tax, Chennai (South), 692, M.H.U. complex, Anna salai, Nandanam, Chennai-600035.
2. The Commissioner of Central Goods & Service Tax (Appeals-II), Chennai, Plot No.2054, Block-I, Newry Towers (2nd Floor), 12th Main Road, 2nd Avenue, Anna Nagar, Chennai-600040.
3. Sh. J.V. Niranjana, Advocate, 18, Veerabhadran Street, Nungambakkam, Chennai-600034.
4. P.P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED

Praveen Negi
06/10/23

प्रवीण नेगी / Praveen Negi
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066