

SPEED POST



F.No. 195/212/SZ/2018-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.....26/10/23

Order No. 90/2023-CX dated 26-10-2023 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 Applications filed under section 35 EE of the Central Excise
Act, 1944 against the Order-in-Appeal Nos. 527/2017 CT dated
12.12.2017, passed by the Commissioner of Central Tax (Appeals-II),
Bengaluru.

Applicant : M/s Indo MIM Pvt. Ltd., Bengaluru.

Respondent : The Pr. Commissioner of CGST & Central Excise ,
Bengaluru North.

ORDER

Revision Application, bearing No. 195/212/SZ/2018-RA dated 05.09.2018, has been filed by M/s Indo MIM Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 527/2017 CT dated 12.12.2017, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal partially allowed the appeal filed by the Applicant against Order-in-Original No. 06/2017(R) dated 11.08.2017 passed by the Assistant Commissioner of Central Taxes, Central Tax Division-9, Bengaluru North Commissionerate.

2 Briefly stated, the Applicants herein exported "parts and accessories of hearing aid" classifiable under 90219090 of the Central Excise Tariff Act,1985 after payment of duty amounting to Rs.1,03,881/- from their CENVAT credit account. The applicant filed a rebate claim vide their letter dated 04.05.2017 for the said amount. The original authority rejected the rebate claim of the Applicant on the ground that "parts and accessories of hearing aid" classifiable under 90219090 of the Central Excise Tariff Act, 1985 were unconditionally exempted from payment of duty and the applicant was not required to pay any duty, hence, Applicant was not eligible for rebate. Aggrieved, the Applicant preferred an appeal with the Commissioner (Appeals). Vide the impugned OIA, Commissioner (Appeals) set aside the OIO passed by the original authority and allowed the amount of duty paid to be re-credited in the CENVAT credit account of appellant (Applicant herein). The Commissioner (Appeals) in the impugned OIA held that duty paid by the appellant(Applicant herein) was not payable in terms of Board's circular No.940/01/2011-CX dated 14.01.2011. However, the duty paid has to be treated as deposit only and since the same was debited from the CENVAT credit account, the same may be returned as re-credit to the appellant's CENVAT credit account. Impugned OIA in the instant revision application was received by the applicant on 18.12.2017 but the Application has been filed on 05.09.2018. The Applicant has sought condonation of delay.

3. The revision application has been filed, mainly, on the grounds that since rebate has been allowed to them vide the impugned OIA and which has been restricted to be

paid by the way of re-credit in Applicant's CENVAT credit account. However, as there is no provision to take CENVAT credit post GST law 2017, the re-credit allowed has to be granted in cash in terms of Section 142(3) of the GST Act, 2017.

4. Personal hearing, in virtual mode, was held on 04.01.2023. Sh. Ramesh Ananthan, Advocate appeared on behalf of the applicant and submitted that the short point is regarding the rebate granted to the Applicants by the Commissioner (Appeals) by way of credit rather than cash. He quoted the Gujarat Thermax judgment in support of his case, which he said is squarely applicable to the subject case.

5.1. The Government has carefully examined the matter. At the outset, it is observed that the instant revision application has been filed after 260 days from the receipt of impugned OIA by the Applicant. Section 35 EE (2) of the Central Excise Act, 1942, reproduced below stipulates that :

"Section 35EE. Revision by Central Government. -

(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 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.


Section 35EE (2) and the proviso to it prescribes that the application has to be made within three months from the date of communication of the order against which the application is being made. Further, 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. In the instant revision application, as per the memorandum of condonation of delay filed along with, the applicant at Point 1 of the memorandum has specifically submitted that they received the order-in-appeal No.527/2017 dated (OIA challenged herein) on 18.12.2017. However, the Government observes that the instant revision application has been filed on 05.09.2018. As per the statute, the Applicant was required to

file the revision application by 17.03.2018 which they failed to do so. Further, delay beyond this date up to 17.06.2018 could have been got condoned by showing sufficient cause for that delay. The Applicant claims that they had been corresponding with the office of Commissioner (Appeals) for rectification of error in the impugned OIA. The Government is not inclined to accept the said reason for delay in filing the revision application within the statutory limit, especially since the instant revision application has been filed a further two and half months after the lapse of the extended condonable period.

5.2. On this issue, the Government observes that the Hon'ble Supreme Court of India in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} held that in that case there was no law declared by the Hon'ble Supreme Court in the impugned decision "that even though the statute prescribed particular period of limitation, this court can direct condonation that would render a specific provision providing for limitation rather otiose." Similarly the Hon'ble Apex Court in the case of Asstt.Commr (CT),LTU, Kakinada Vs Glaxo Smith Kline Consumer Health Care Ltd. reported vide 2020(36) G.S.T.L. 305(S.C.) held that while passing an order legislative intent has to be kept in mind and statutory provisions cannot be rendered otiose. This implies that statute of limitation has to be strictly applied.

6. In light of the judgments (supra), the Government without traversing the merits of the case holds that the instant revision application is hit by the bar of limitation and as such is non-maintainable.

7. The revision application is, accordingly, rejected.


26/10/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

M/s Indo MIM Pvt. Ltd,
No.43,44,45(P),KIADB Industrial Area,
Dodballapur, Bengaluru-562103.

G.O.I. Order No. 90 /23-CX dated 26-10-2023

Copy to:

1. The Principal Commissioner of CGST, Bengaluru (North), No.59, HMT Bhavan , Bellary Road, Bengaluru-560032.
2. The Commissioner of CGST (Appeals-II), Bengaluru Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Domaluru, Bengaluru-560071.
3. Sh. Ramesh Ananthan, Advocate, 586, 44th Cross, Jayanagar 8th block, Bangalore-560070.
4. PS to AS (RA).
5. Notice Board.
6. Guard File.
7. Spare Copy

ATTESTED


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