

SPEED POST



F.No. 195/216/2018-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. 27/5/21....

Order No. 113/2021-CX dated 25-05-2021 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 Order-in-Appeal No. 283/CE/CGST-Appeal-GURUGRAM/SG/2017 dated 17.01.2018 passed by the Commissioner (Appeals), CGST, Gurugram.

Applicant : M/s. PSA Nitrogen Ltd., Faridabad

Respondent : The Commissioner of CGST, Faridabad.

ORDER

A revision application no. 195/216/2018-RA dated 10.12.2018 has been filed by M/s PSA Nitrogen Ltd., Faridabad (hereinafter referred to as the Applicant) against Order-in-Appeal No. 283/CE/CGST-Appeal-GURUGRAM/SG/2017 dated 17.01.2018, passed by the Commissioner (Appeals), CGST, Gurugram whereby the appeal filed by the Applicant against the Order-in-Original No. 07/AC/Demand/D-8/15-16 dated 08.03.2016 passed by the Assistant Commissioner of Central Excise-of the then Division-VIII, Faridabad-II Commissionerate has been rejected, as barred by the limitation.

2. Briefly stated, the Applicant filed rebate claims amounting to Rs. 30,35,698/- towards duty paid on excisable goods which were exported, under Rule 18 of the Central Excise Rules, 2002, on 01.06.2015 in the office of the original authority. The rebate claim was rejected by the original authority after following the principles of natural justice, vide the aforesaid Order-in-Original dated 08.03.2016. The Applicant admittedly received the Order-in-Original on 08.04.2016, but filed appeal before the Commissioner (Appeals) on 22.09.2017 i.e. after a delay of 17 months. The Commissioner (Appeals) citing the provisions of Section 35 of the Central Excise Act, 1944 and relying upon the judgment of the Hon'ble Supreme Court in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} rejected the appeal as it was filed beyond the condonable limit of 30days. As per the RA, the impugned order of Commissioner (Appeals) was received by the Applicant on 20.01.2018 and the RA has been filed on 10.12.2018. In the RA, several grounds including on merits have been urged to assail the Commissioner (Appeals)'s order. An application for condonation of delay has also been filed.

3. Personal hearing in the matter was fixed on 13.04.2021, 20.04.2021, 04.05.2021 & 25.05.2021. No one appeared for the Applicant nor any request for adjournment has been received.

Respondent department has also remained unrepresented. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

4. The Government has examined the matter. The instant RA has been filed on 10.12.2018 whereas the impugned Order-in-Appeal was received by the Applicant on 20.03.2018 i.e. after 10 months and 20 days. In terms of Section 35EE of the Central Excise Act, 1944, the revision application has to be filed within the period of 3 months from the date of communication of the Order-in-Appeal. The Government can condone the delay in filing of the RA for a further period of 3 months if sufficient cause is shown for delay. Therefore, the instant RA has been filed beyond the condonable period of 3 months and is liable to be rejected on this ground-alone. Further, the appeal before the Commissioner (Appeals) was also filed beyond the condonable period of 30 days after the normal limitation of 60 days as per Section 35 of the Act. Therefore, the Commissioner (Appeals) has, relying upon the judgment in Singh Enterprises (supra), correctly rejected the appeal.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. PSA Nitrogen Ltd.,
Plot No. 71-72, New D.L.F.,
Industrial Area, Faridabad- 121 003

G.O.I. Order No. 113 /21-CX dated 25-05-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Faridabad, GST Bhawan, New C.G.O. Complex, N.H. 4, Faridabad – 121 001.
2. Commissioner (Appeals), CGST, Gurugram.

3. Mr. Devesh Kumar Malan, Counsel, R-27, Jangpura B,
Mathura Road, New Delhi- 110 013.

~~04/10~~ P.S. to A.S. (Revision Application).

5. Guard File.

6. *spare copy*

ATTESTED

[Signature]
27/5/24

Supdt. (PA)