

SPEED POST



F.No. 195/12/2019-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. 08/01/21.

Order No. 215/21-Cx dated 07/09/2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.53/CE/RKL-GST/2018 dated 28.12.2018, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.

Applicant : M/s Fast Build Blocks (P) Ltd., Cuttack.

Respondent : The Commissioner of CGST & Central Excise, Bhubneswar

ORDER

A Revision Application No. 195/12/2019-RA dated 09.04.2019 has been filed by the M/s Fastbuild Blocks Private Limited, Cuttack (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 53/CE/RKL- GST/2018 dated 28.12.2018, passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhubaneswar. Commissioner (Appeals) has allowed the appeal of the respondent department against the Order-in-Original no. AC/CTC-II/C.Ex/CDR/39/2017 (R) dated 12.09.2017, passed by the Assistant Commissioner of Central Excise & CGST, Cuttack-II Division, Cuttack who had sanctioned the rebate of duty amounting to Rs. 4,98,853/-.

2. The brief facts of the case are that the Applicant filed a rebate claim amounting to Rs. 5,11,635/-, under Rule 18 of Central Excise Rules, 2002. The said rebate claim was returned to the Applicant by the jurisdictional Central Excise authority with deficiency memo dated 04.07.2016. After complying with the deficiencies, the Applicant resubmitted the rebate claim before the Central Excise authorities on 19.06.2017 for a reduced amount of Rs. 4,98,853/-, which was sanctioned by the Assistant Commissioner of Central Excise, Cuttack-II Division, Cuttack. Being aggrieved the respondent appealed against this order before the Commissioner (Appeals) on the ground that the rebate claim was filed beyond the time limit of one year i.e. on 19.06.2017 treating the resubmitted claim as the fresh one. Commissioner (Appeals), vide the above mentioned OIA, allowed the appeal of the respondent and held the refund claim to be time barred.

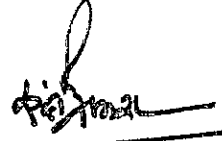
3. The revision application has been filed, mainly, on the grounds that the rebate claim was filed before the expiry of one year from the relevant date prescribed under Section 11 B of the Central Excise Act, 1944; that there is no time limit for rectification; and that there is no statutory provision to the effect that time limit for filing rebate claim will be reckoned from the date of clarification provided in response to the queries raised by the department.

4. Personal hearing, in virtual mode, was held on 06.09.2021. Ms. Amrita Mitra, Advocate appeared for personal hearing on behalf of the Applicant and reiterated the contents of the revision application. She highlighted that the claim was originally filed within one year and it is only in response to the Deficiency Memo that the reduced claim was filed. Hence the question of time bar does not arise. Sh. Mohan Behera, Assistant Commissioner, appeared on behalf of the respondent department and reiterated the contents of written submission dated 01.09.2021.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the revision application, the Government observes that the Commissioner (Appeals) has allowed the appeal of the respondent department on the ground that the date of resubmission of the claim, after the removal of deficiencies as raised by the respondent in their letter dated 04.07.2016, is the relevant date for computing the limitation. Government further observes that it is on record and undisputed that the original claim was filed by the Applicant within one year from the relevant date. The original claim was returned by the Respondent to the Applicant along with a

Deficiency Memo whereas no such provisions permitting return of original claim to the Applicant exists as per Rules and under the notification no. 19/2004-CE (NT) dated 06.09.2004. Thus, the return of the original rebate claim by the respondent is not legally sustainable. The queries raised by the respondent were replied by the Applicant on 19.06.2017 and the same were only in reference to and in continuation of the original claim and cannot be treated separately. Government, thus, holds that the Commissioner (Appeals) has erred by treating the date of resubmitted claim as the relevant date.

6. In view of above discussions, the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

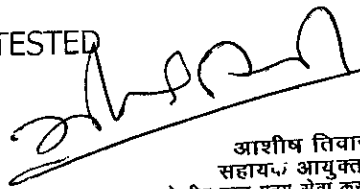
M/s Fastbuild Blocks Private Limited,
P.O. Harianta, P.S. Tangi, District,
Cuttack – 754025 (Odisha).

Order No. 215 /21-Cx dated 07/09/ 2021

Copy to:

1. The Commissioner of CGST & Central Excise, Bhubneshwar, C.R. Building, (GST Bhawan), Rajaswa Vihar, Bhubneshwar, Odisha - 751007.
2. Commissioner (Appeals), CGST, Central Excise & Customs, Bhubneshwar, C.R. Building, (GST Bhawan), Rajaswa Vihar, Bhubneshwar, Odisha - 751007.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi