

SPEED POST



F.No. 195/223/2018-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. 08/09/2021

Order No. 216/21-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.165/HWH/XAP-67/2017-18 dated 21.05.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata.

Applicant : M/s B.P. Plyboard Pvt. Limited, Kolkata

Respondent : The Commissioner of CGST & Central Excise, Howrah Commissionerate

.....

ORDER

A Revision Application No. 195/223/2018-RA dated 18.12.2018 has been filed by the M/s B.P. Plyboard Pvt. Ltd, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 165/HWH/XAP-67/2017-18 dated 21.05.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata. Commissioner (Appeals) rejected the appeal of Applicant against the Order-in-Original no. 04/Singur/16-17/Rebate dated 11.04.2016, passed by the Assistant Commissioner of Central Excise, Singur Division, Kolkata – IV Commissionerate who had rejected the rebate claim of the Applicant amounting to Rs. 1,29,510/-.

2. The brief facts of the case are that Applicant filed a rebate claim amounting to Rs. 1,29,510/- under Rule 18 of Central Excise Rules, 2002, which was rejected by the Assistant Commissioner of Central Excise, Singur Division, Kolkata-IV Commissionerate on the ground that the Applicant had passed the duty burden, i.e., the incidence of duty, to the buyer. Being aggrieved the Applicant appealed against this order before the Commissioner of CGST & Central Excise (Appeals), Kolkata who upheld the impugned Order-in-Original and rejected the appeal of the Applicant.

3. The revision application has been filed on the grounds that whatever duty has been paid on exported goods has to be refunded back under Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE(NT) dated 06.06.2004; and that there is no co-relation with the remittance for the grant of rebate claim under the Rules.

4. Personal hearing, in virtual mode, was held on 06.09.2021. Sh. Janeshwar Prasad, General Manager, appeared on behalf of the Applicant. Sh. Janeshwar Prasad submitted that the only ground on which the rebate was rejected in appeal was that the benefit of duty rebate had not been passed on to the Customer. He drew attention to ledger submitted, vide letter dated 29.07.2021, wherein the rebate amount of Rs. 1,29,510/- has been credited to the Customer. No one appeared on behalf of the respondent on 06.09.2021, nor has any request for adjournment been received. Accordingly, the case is being taken up for final disposal.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the revision application, it is observed that the revision application has been filed after a delay of 113 days. As per Section 35EE(2) of the Central Excise Act, 1944, an application under subsection (1), i.e., revision application can be made within 3 months from the date of communication to the applicant of the order against which the application is being made. However, proviso to sub section (2) provides discretion to the Government to allow applicant to present the application within a further period of 3 months if the Government is satisfied that the applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. In this case, the OIA was communicated to the applicant on 27.05.2018, as indicated in the Condonation of Delay application, and the revision application has been filed on 18.12.2018. Thus, the revision application has been filed even beyond the condonable period of three months. Since, the Government is not empowered to

condone the delay beyond the statutorily provided condonable period of three months, the revision application is liable to be rejected as barred by limitation.

6. The revision application is rejected, accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

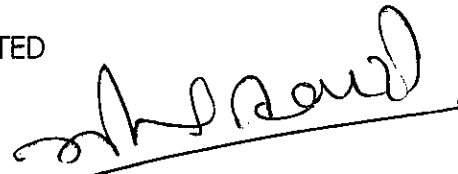
M/s BP Plyboard Pvt. Limited,
Birmdanga, Bhastara, PS Gurap,
Durgapur Express Highway (MH2),
District Hooghly - 712303

Order No. 216/21-Cx dated 07/09/2021

Copy to:

1. The Commissioner of CGST & Central Excise, Howrah Commissionerate (erstwhile the Commissioner of Central Excise, Kolkata - IV) 15/1, Strand Road, 7th Floor, MS Building, Customs House, Kolkata-70000132.
2. Commissioner of Central Excise (Appeals-I), Kolkata, Bamboo Villa, 4th Floor, 169, AJC Bose Road, Kolkata-700014.
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