

**SPEED POST**



**F. No. 195/152/2018—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..7/4/21.....

Order No. 73/21-CX dated 07/04/21 of the Government of India, passed by Shri Sandeep Prakash, 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. 211/CB/CE/JPR-II/11 dated 07/09/2011 passed by Commissioner, Central Excise (Appeals), Jaipur-II.

Applicant: M/s. Ercon Composites, Jodhpur.

Respondent: Commissioner of Central Excise, Jaipur.

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**ORDER**

A Revision Application No. 196/152/2018—R.A. dated 21/06/2018 has been filed by M/s Ercon Composites, Jodhpur, (hereinafter referred to as applicant) against Order-in-Appeal No. 211/CB/CE/JPR-II/11 dated 07/09/2011 passed by Commissioner, Central Excise (Appeals), Jaipur-II, wherein the appeal filed by the applicant, against Order-in-Original No. 229/2010-R dated 12.11.2010 passed by Deputy Commissioner, Central Excise, Jodhpur, has been dismissed.

2. The brief facts leading to the present proceedings are that the applicant had filed a rebate claim for Rs.5,08,980/- for central excise duty paid on export goods under Rule 18 of Central Excise rules, 2002. Original authority rejected the said claim on the ground that exported goods were exempted from whole of central excise duty as per Notification no. 24/2003-CE dated 31.03.2003 and that, as per Section 5A(1A) of the Central Excise Act, 1944, the applicant was bound to avail the exemption and should not have paid duty. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal, rejected the appeal on the same grounds.

3. The present revision application has been filed mainly on the ground that the exemption contained in notification no. 24/2003-CE dated 31.03.2003 is conditional and they can pay duty on the goods cleared by them and thus, subsequently, claim rebate thereon.

4. The applicant claims to have received the impugned Order-in-Appeal on 12.10.2011 and the revision application has been filed on 21.06.2018. An application for condonation of delay has been filed along with the revision application which states that initially, the applicant filed an appeal before CESTAT, New Delhi, against the said Order-in-Appeal which was dismissed by the Tribunal for being not filed before the right forum i.e. Government of India, vide Final Order No. A/56771/2017-SM [BR] dated 31.08.2017. Liberty was granted to the applicant to approach the appropriate authority. Again, a miscellaneous application dated 12.03.2018 was filed before CESTAT for Rectification of Mistake(ROM) pleading that the main issue, whether the goods manufactured in 100% EOU are exempted goods or not and whether rebate would be admissible on such goods if exported after payment of duty, has not been addressed. The CESTAT, vide Miscellaneous Order No. MO/50272/2018-SM [BR] dated 09.05.2018, dismissed the ROM application as misconceived.

5. Personal hearing was held on 05.04.2021, in virtual mode. Sh O. P. Agarwal, Chartered Accountant, appeared for the applicant and reiterated the contents of the revision application. He highlighted that:-

- (i) The notification no. 24/2003-CE dated 31.03.2003 is conditional. Therefore, Section 5A (1A) of the Central Excise Act, 1944 has no applicability in the facts of this case. As such, the rebate is admissible.

- (ii) In the alternate, if this is not accepted, the re-credit in terms of the impugned Order-in-Appeal will have to be refunded to them in cash as per the provisions of Section 143 of the CGST Act, 2017.

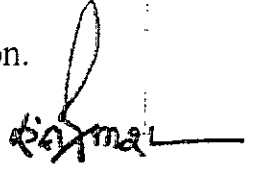
None appeared for the respondents and no request for adjournment has been received. Hence, the matter is taken up for disposal on the basis of facts available on records.

6. The matter has been examined by the Government. The impugned Order-in-Appeal was received by the applicant on 12.10.2011 whereas the present revision application has been filed on 21.06.2018. The applicant has pleaded that this delay occurred as they had filed an appeal before CESTAT against the impugned order of Commissioner (Appeals) which was dismissed by the Tribunal vide Final Order dated 31.08.2017 on the ground of jurisdiction and they were granted liberty to approach the appropriate authority i.e. Government of India, for redressal as this was a matter essentially related to rebate. The applicant thereafter filed an ROM application to seek rectification of the Final Order of the Tribunal which was again dismissed vide Miscellaneous Order dated 09.05.2018 as being misconceived. The Government observes that in the preamble of the impugned Order-in-Appeal, the applicant was clearly advised that in the case of rebate of duty of excise, a revision application should be filed before the Central Government under Section 35EE of the Central Excise Act, 1944. Despite the same, applicant chose to file an appeal before CESTAT, which eventually dismissed the appeal, vide Final Order dated 31.08.2017, with liberty to approach the appropriate authority. In spite of this, the applicant persisted to avail remedy before CESTAT only, ostensibly on the grounds of error

apparent from records. Thus, it is apparent that the applicant did not approach

- CESTAT due to ignorance or a bonafide omission, rather applicant willfully persisted in seeking remedy from a wrong forum. In the circumstances, the Government holds that the delay in filing the instant revision application cannot be condoned. The case laws cited to support the case for condonation are not applicable in the facts of this case.

5. The revision application is rejected on the grounds of limitation.

  
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(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Econ Composites(Earlier 100% EOU),

Khasra No. 1102/740/1,

MIA, Basni Phase II, Jodhpur (Rajasthan)

G.O.I. Order No. 73/21-CX dated 7-4-2021

Copy to:-

1. Commissioner of CGST and Central Excise, Jaipur.
2. Commissioner of Central Excise (Appeals), Jaipur-II.
3. PA to AS(Revision Application)
4.  Spare Copy
5. Guard File

ATTESTED

  
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(Ashish Tiwari)

Assistant Commissioner (R.A.)