

REGISTERED

SPEED POST



F.No. 195/186/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 8/4/21.....

Order No. 75/21 dated 08-04-2021 of the Government of India passed by Shri 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.286(SM)CE/JPR/2018 dated 20.06.2018 passed by the Commissioner(Appeals) Central Excise & GST, Jaipur.

Applicant : M/s Sanganeriya Spinning Mills Ltd., Behror.

Respondent : Commissioner of Central Excise & CGST,  
Alwar

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**ORDER**

A Revision Application No. 195/186/2018-RA (CX) dated 05.09.2018 has been filed by the M/s Sanganeriya Spinning Mills Ltd., Behror (hereinafter referred to as the applicant) against the Order-In-Appeal No. 286(SM)CE/JPR/2018 dated 20.06.2018, passed by the Commissioner(Appeals), Central Excise & GST, Jaipur, wherein the Order-in-Original No. 296/2017 (R) dated 01.11.2017, passed by the Assistant Commissioner, CGST Division-E, Behror, has been upheld.

2. The brief facts of the case are that M/s Sanganeriya Spinning Mills Ltd. had filed two rebate claims amounting to Rs. 5,19,383/- and Rs. 5,18,754/- on 02.08.2017 in respect of the duty paid on export goods which were exported through merchant exporters, namely, M/s R.R. Enterprises, Chennai. The goods were exported vide ARE-Is Nos. 001 dated 06.05.2016 (Shipping Bill No. 7547560 dated 09.05.2016) and 002 dated 10.06.2016 (Shipping Bill No. 8215261 dated 11.06.2016). The original authority rejected the rebate claims on the ground that the same were filed beyond the period of one year of limitation as prescribed under Section 11 B of the Central Excise Act, 1944. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal rejected the same.

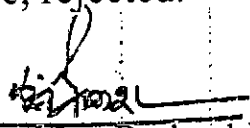
3. The instant revision application has been filed, mainly, on the grounds that late filing of rebate claims is a mere technical and

procedural infraction and rebate cannot be denied for this reason, being a substantive benefit. Initially, the applicant filed the rebate claims on 14.09.2016 with all the documents except the ARE-1 copy containing the customs endorsement from the merchant exporter. The claims were withdrawn on 23.11.2016 after an oral instruction from the department. The said rebate claims were resubmitted to the department on 02.08.2018. The date of filing of the claim should be considered as the date when the claims were initially filed by the applicant.

4. Personal hearing, in virtual mode, was held on 30.03.2021. Sh. R. Krishnan, Advocate, attended the hearing on behalf of the applicant. He stated that the application filed originally was withdrawn by the applicant on the oral request of the department, in good faith. Sh. Krishnan submitted that there is no provision in law for return or withdrawal of a refund application. Therefore, the return of application was not legally correct. This being so, the limitation should be counted from the original filing of the application. He relied upon the judgment of Hon'ble Gujarat High Court, reported as [2005(184) ELT 240(Guj)] in this regard. No one appeared for the respondent and no request for adjournment has been received. Hence, the case is being taken up for disposal on the basis of facts available on record.

5. The Government has examined the matter. It is not disputed by the applicant that the rebate claims were time-barred when they were submitted finally on 02.08.2018. It is also an admitted fact that the earlier claims were withdrawn by the applicants themselves and the contention that such withdrawal was at the oral request of the department is not substantiated with any evidence. Hence, the date of filing of rebate claims cannot be taken as the initial date on which the earlier claims were filed as they were withdrawn by the applicant on their own volition. The judgment of Hon'ble Gujarat High Court in the case of M/s United Phosphorous Ltd. (supra) does not support the case of present applicant in as much as in that case the refund application was returned by the department whereas in the present case the application for rebate was withdrawn by the applicant themselves.

6. In view of the above, there is no infirmity in the impugned Order-in-Appeal. The Revision Application is, therefore, rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Sangneriya Spinning Mills Ltd.  
15-A, RIICO industrial Area,  
Neemrana, Behror, District Alwar  
PIN Code 301020.

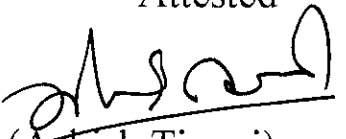
Order No. \_ 75\_/21-Cx dated 08-04-2021

Copy to:

1. Commissioner of Central Goods & Service Tax, "A" Block, Surya Nagar, Alwar-302010
2. Commissioner (Appeals) Central Excise & GST, Jaipur, NCRB, Statute Circle, Jaipur-302005 .
3. Assistant Commissioner, CGST, Division-E, Behror, Rajasthan
- 4.PA to AS(RA)
- 5.Guard File.

~~6~~ Spare Copy

Attested

  
(Ashish Tiwari)

Assistant Commissioner (Revision Application)