

REGISTERED  
SPEED POST



F.No. 196/07/ST/2016-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-110066

Date of Issue.....

Order No. 03/2018 -ST dated 6-2-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order-in-Appeal No. JAL-EXCUS-000-APP-169-15-16 dated 21.07.2015 passed by Commissioner of Central Excise (Appeals-II), Chandigarh

Applicant : M/s. Emerson Information Technology Solutions, Mohali

Respondent : Commissioner of Central Excise & Customs, Chandigarh

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**ORDER**

A revision application No.196/07/ST/2016-RA dated 30.05.2016 has been filed by M/s. Emerson Information Technology Solutions, Mohali (hereinafter referred to as the applicant) against the Order-in-Appeal No. JAL-EXCUS-OOO-APP-169-15-16 dated 21.07.2015, passed by the Commissioner of Central Excise (Appeals-II), Chandigarh, who has allowed the departmental appeal and set aside the Order of the Deputy Commissioner granting rebate of service tax of Rs.612583/- to the applicant on the ground that she did not have power to amend/modify her own order.

2. The revision application has been filed by the applicant mainly on the ground that she was empowered to rectify the mistake under Section 74 of the Finance Act 1994 and thus the Commissioner (Appeal) has passed an erroneous order by setting aside the Deputy Commissioner's order granting them the rebate of service tax.

3. A personal hearing was held in this case on 22.1.18 which was attended by Shri Sumit Jindal, Chartered Accountant, for the applicant and Shri Kannav Sharma, Assistant Commissioner, Mohali-I Division, for the respondent. While Shri Jindal reiterated the above mentioned grounds of revision during the hearing, Shri Kannav Sharma opposed the revision application for the reasons already discussed in the OIA.

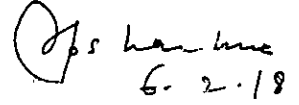
4. On examination of relevant case records, it is noticed by the Government at the outset that the revision application has been filed after the gap of 10 months from the receipt of the OIA by the applicant in this case. Whereas as per Section 35EE (2) of the Central Excise Act 1944, made applicable to the service tax matters by virtue of Section 83 of the Finance Act 1994, the revision application was required to be filed within 3 months from the date of the order of the Commissioner (Appeal). This enormous delay is sought to be condoned on the ground that they had filed appeal wrongly against the order of the Commissioner (Appeal) before CESTAT on 28.10.15 and it has been dismissed by the CESTAT as non-maintainable vide this order dated 3.5.16 only and they have filed the revision application soon after that on 30.5.16. However, even if this reason is accepted as genuine, it is observed by the Government that the revision

application filed belatedly on 30.5.16 also was not accompanied by a fee of Rs.1000/- and it has been paid as late as on 22.8.16 as per GAR-7 Form submitted by the applicant under their letter dated 24.8.16. Whereas as per sub-section 3 of Section 35EE of Central Excise Act, 1944, a revision application is to be accompanied by a fee of Rs.1000/- when the amount of duty etc. levied by any Central Excise Officer is more than Rs.1.00 lakh. This requirement of payment of fee before or at the time of filing the application is mandatory and no relaxation in this regard is provided under the aforesaid provision or any other Section. Thus if any application is not accompanied by the specified fee, such application cannot be accepted as properly filed and cannot be considered by the Government by virtue of the above mentioned provision. While the instant revision application has been filed with the Government on 30.5.16, the fee of Rs.1000/- has been paid only on 24.8.16. Hence the proper revision application in this case can be considered to have been filed only on 24.8.16 and by this date this application is clearly time barred as a revision application can be filed only within 3 months from the date of communication of the Commissioner (Appeal)'s Order as per sub-section 2 of Section 35EE of Central Excise Act, 1944 which was received in this case on 30.07.15 and it is hit by time limitation of 3 months even in the light of dismissal of their appeal by CESTAT on 3.5.16.

5. Besides above, it is also evident from the Orders In Original and Order In Appeal in this matter that the Deputy Commissioner had rejected applicant's rebate claim of Rs.612583/- vide her earlier order dated 21.5.13 and thereafter she sanctioned the rebate of Rs.481285/- out of rejected amount of Rs.612583/- vide her order dated 30.9.14. The applicant has claimed that the Deputy Commissioner had power to modify her order under Section 74 of the Finance Act. However, the Government does not agree with this averment as Section 74 is meant for correcting a mistake apparent on the face of the Order and does not authorize any one for issuing a fresh order to modify or nullify the previous order. Whereas it is manifest that the second Order passed by the Deputy Commissioner on 30.9.14 is not for correcting any apparent mistake in the earlier Order dated 21.5.13 but is a fresh order with a clear intention to override/modify

the earlier order for which the Deputy Commissioner was not empowered under Section 74 of the Finance Act. Therefore, the Government is in agreement with the Commissioner (Appeals)'s view that the Deputy Commissioner did not have power to review her earlier Order or re-adjudicate the case which had already been decided by her.

6. In view of the above discussion, the revision application is not found maintainable on the ground of time limitation as well as merit.

  
6.2.18

(R.P.Sharma)

Additional Secretary to the Government of India

M/s. Emerson Information Technology Solutions  
A-40A, Quark City India Pvt. Ltd. (SEZ)  
Landmark Plaza, 3<sup>rd</sup> Floor, F-3 Tower,  
Phase 8-B, Industrial area, Mohali  
Pinjab-160059

G.O.I. Order No. 03/18-ST dated 6-2-2018

Copy to:-

1. Commissioner of Central Excise, Chandigarh-II, C.R.Building, Plot No.19, Sector 17-C, Chandigarh-160017
2. Commissioner of Central Excise (Appeals), Chandigarh-II, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh-160017
3. The Assistant Commissioner Service Tax Division, Chandigarh, C.R.Building, Plot No.19, Sector 17-C, Chandigarh
4. PA to AS(Revision Application)
- ✓ 5. Guard File
6. Spare Copy.

Attested

(Debjit Banerjee)  
STO (RA)