

SPEED POST



F.No. 196/15/ST/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...17/6/21....

Order No. 22/2021-ST dated 17-6-2021 of the Government of India, passed by Sh. Sandeep Prakash, 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. 796(CRM)CE/JDR/2018 dated 24.07.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.

Applicants : M/s Rajasthan Syntex Ltd, Udaipur.

Respondent : Commissioner of Central Excise & CGST, Udaipur.

ORDER

A revision application no. 196/15/ST/2018-R.A. dated 02.11.2018 has been filed by M/s Rajasthan Syntex Ltd, Udaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 796(CRM) CE/JDR/2018 dated 24.07.2018 wherein the Commissioner (Appeals) has rejected the Applicant's appeal against Order-in-Original No. 5/14/R-ST dated 28.01.2014 passed by Assistant Commissioner, Central Excise and CGST Division Udaipur.

2. Brief facts of the case are that the Applicants were engaged in the manufacture of manmade yarn of Synthetic & Artificial Staple Fibre and Cotton Yarn under CETH 52 and 55 of the Schedule to the Central Excise Tariff Act, 1985. They had filed a refund claim of Rs. 9,43,157/- of Service tax paid from CENVAT credit account on the taxable services provided by the foreign based commission agents in respect of exports made during the period April, 2008 to June, 2008 under notification no. 41/2007-ST dated 06.10.2007 which was rejected by the original authority vide Order-in-Original no. 193/09/ST(Ref.) dated 31.03.2009. Aggrieved, the Applicants filed an appeal before the Commissioner (Appeals), who, vide Order-in-Appeal no. 345(KKG) ST/JPR-II/2009 dated 03.11.2009 upheld the Order-in-Original dated 31.03.2009, except in respect of refund of Service Tax paid on commission paid to foreign based agents and remanded the matter to the original authority to re-examine the issue afresh in the light of documents submitted by the Applicants. The original authority, vide aforesaid Order-in-Original dated 28.01.2014, again rejected the claim on the grounds of non-fulfilment of the conditions of notification no. 41/2007-ST dated 06.10.2007. It was also observed by the original authority that the Commissioner (Appeals) had rejected their appeals, vide order

dated 03.11.2009, on the ground that they had also availed drawback on the exported goods, rendering them ineligible to claim rebate. The Applicants filed an appeal against this Order-in-Original, which has been rejected by the Commissioner (Appeals) on the ground that CESTAT, vide Final Order No. 52478/2016 dated 18.07.2016, had rejected their appeal against the Order-in-Appeal dated 13.11.2009.

3. The instant revision application has been filed mainly on the ground that there is no restriction on payment of service tax through CENVAT credit account and therefore, the Applicants are entitled for the refund of service tax paid on services provided by foreign commission agents.

4. Personal hearing was held on 16.06.2021, in virtual mode. Sh. Tarun Trehan, Chartered accountant, appeared for the Applicants and reiterated the contents of the revision application. Upon being asked, Sh. Trehan confirmed that the Final Order No. 52478/2016 dated 18.07.2016 relied upon by the Commissioner (Appeals) has been challenged before the Hon'ble Rajasthan High Court but no stay has been granted by the Hon'ble Court. No one appeared for the respondent department and no request for adjournment has been received also. Hence, the matter is taken up for decision on the basis of facts available on record.

5. The Government has examined the matter. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the Applicants' appeal relying upon the CESTAT's Final Order No. 52478/2016 dated 18.07.2016. An appeal has been filed against this Order by the Applicants before Hon'ble Rajasthan High Court and, admittedly, no stay has been granted by the Hon'ble Court in this case. In the circumstances, the

Commissioner (Appeals) could not have but followed the Orders of CESTAT. Hence, the Government finds no infirmity in the impugned order of the Commissioner (Appeals).

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

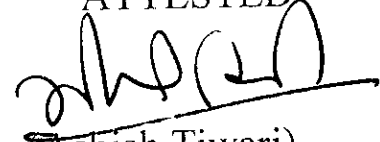
M/s Shree Rajasthan Syntex Limited,
SRSL House, NH 8, Pulla Bhuwana Road,
Udaipur, Rajasthan.

G.O.I. Order No. 22/21-ST dated 17-6-2021

Copy to: -

1. The Commissioner of CGST, Udaipur.
2. The Commissioner (Appeals), Central Excise & CGST Customs, Jodhpur.
3. M/s Lakshmikumar & Sridharan, 5, Link Road, Jangpura Extension, New Delhi-110 014.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ~~Spare copy.~~

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)