

REGISTERED  
SPEED POST



F.No. 196/30/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. 25/2018 -ST dated 5-3-18 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.73/ST/HAL/2016 dated 18.05.2016 passed by Commissioner Central Excise (Appeals-I), Kolkata

Applicant : M/s. Modern India Concast Ltd., Haldia

Respondent : Commissioner of Central Excise, Kolkata

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**ORDER**

A revision application No.196/16/ST/14-R.A. dated 07.10.2014 has been filed by M/s. Modern India Concast Ltd., Haldia (hereinafter referred to as the applicant) against the Order-in-Appeal No.73/ST/HAL/2016 dated 18.05.2016 passed by Commissioner Central Excise (Appeals-I), Kolkata, whereby the appeal of the applicant filed against the Order of the jurisdictional Assistant Commissioner has been rejected.

2. The revision application is filed mainly on the ground that the Commissioner (Appeals) has failed to appreciate that all the services were received by them in their Haldia Unit and were used for manufacture of exported goods for which the refund of accumulated Cenvat Credit on account of exported goods is admissible to them.

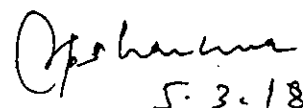
3. A personal hearing was fixed in this case earlier on 7.2.18 and on the applicant's request second hearing was fixed on 27.2.18, which was attended by Shri R.K.Singh, Sr. Executive, for the applicant, who reiterated the grounds of revision of revision already pleaded in their application. The respondent also did not appear for the personal hearing on these two dates and has rather furnished counter reply vide their letter dated 2.2.18 which was received in this Office on 13<sup>th</sup> February 2018. Hence, the revision application is taken up for decision on the basis of available records.

4. On examination of the revision application it is noticed by the Government at the outset that the revision application presented on 26.8.16 before the Government was accompanied by a fee of Rs.200 only vide State Bank of India's e-receipt dated 16.8.16 whereas as per Section 35EE of the Central Excise Act, 1944, the revision application was required to be accompanied by a fee of Rs.1000 in this case as the refund amount involved in this case is Rs.708008/- as per the revision application itself. This payment of fee along with revision application or atleast within 3 months of receipt of Order-in-Appeal, within which only the revision application can be filed, as mandatory and no relaxation in this regard can be provided under the aforesaid provision or any other Section. Thus if any application is not accompanied by the required amount of fee, such application cannot be considered as proper revision application by virtue of Section

35EE itself. As mentioned above in this case while a fee of Rs.200 was paid on 16.8.16 in place of required fee of Rs.1000, additional fee of Rs.1000 was subsequently paid on 19<sup>th</sup> December 2016. Thus the required fee of Rs.1000 is paid by the applicant on 19<sup>th</sup> December 2016 only and as a result the revision application can be considered to have been properly filed on 19<sup>th</sup> December 2016 only as against the Order-in-Appeal dated 18.5.16 which was received by the applicant on 6.6.16 against which the revision application was required to be filed within 3 months of the receipt of Order-in-Appeal. Thus the revision application is filed after more than 6 months from the receipt of Commissioner (Appeals)'s Order in this case on 6.6.16 and it is manifestly time barred and the delay of more than 3 months involved in this case cannot be condoned by the Government also under Sub-Section 2 of Section 35EE of the Central Excise Act.

5. Besides above, it is also observed that the revision application involves the issue regarding refund of accumulated Cenvat Credit under Rule 5 of the Cenvat Credit Rules 2004. Whereas under Section 35EE of the Central Excise Act, read with 1<sup>st</sup> proviso to Section 35(B), the revision application can be filed with the Government only if the Commissioner (Appeals)'s Order involves an issue relating to loss of goods, rebate of duty on exported goods or goods exported under bond. Since no such issue is involved in this case and the Commissioner (Appeals)'s Order is passed upholding rejection of refund of Cenvat credit under Rule 5 of CCR by the jurisdictional Assistant Commissioner, the Government is of the view that it does not have jurisdiction to deal with the above referred Commissioner (Appeals)'s Order.

6. Accordingly, the revision application is rejected.

  
5.3.18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s. Modern India Concast Ltd.,  
(Unit-II), Bhuniarachak, J.L.No.122,  
Haldia-721657, Distt. Purba-Midnapur  
West Bengal

G.O.I. Order No. 257/18-ST dated 5-3-2018

Copy to:-

1. Commissioner of Central Excise & Service Tax, Haldia, Kolkata, 25, Princep Street, Kolkata-700072
2. Commissioner of Central Excise (Appeals-1), Kolkata, Central Revenue Building, 169, A.J.C. Bose Road, 4<sup>th</sup> Floor, Bamboo Villa, Kolkata-700014
3. The Assistant Commissioner of Central Excise & Service Tax, Haldia-1 Division, Haldia Commissionerate, Tripathy Complex, Debhog, Bhabanipore, Haldia
- ✓ 4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy.

Attested

5.3.2018

(Debjit Banerjee)  
STO (RA)