

REGISTERED
SPEED POST



F.No. 196/14-16/ST/2013-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue.....

Order No. 31-33/2018 -ST dated 2-4-18 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 Applications filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Orders-in-Appeal No.93/ST/Appeal/CHD-II/12 dated 14.03.2012, 105/ST/Appeal/CHD-II/12 dated 20.03.2012 & 108/ST/Appeal/CHD-II/12 dated 20.03.2012, passed by the Commissioner of Central Excise (Appeals-II), Chandigarh

Applicant : M/s. T.C.Terrytex Limited, Lalru, Mohali

Respondent : Commissioner of Central Excise & Customs, Chandigarh-II

ORDER

Three revision applications F.No.196/14-16/ST/2013-RA dated 27.06.12, 23.6.12 and 27.6.12 have been filed by M/s. T.C.Terrytex Limited, Lalru, Mohali (hereinafter referred to as the applicant) against the Orders-in-Appeal No.93/ST/Appeal/CHD-II/12 dated 14.03.2012, 105/ST/Appeal/CHD-II/12 dated 20.03.2012 & 108/ST/Appeal/CHD-II/12 dated 20.03.2012, passed by the Commissioner of Central Excise (Appeals-II), Chandigarh, whereby the applicant's appeals filed against the orders of the Deputy Commissioner, Central Excise Division, Derabassi have been rejected.

2. The brief facts of the case leading to the present proceeding before the Government are that the applicant filed refund claims under Notification No.17/2009-ST dated 7.7.09 in respect of CHA and Clearing and forwarding services. However, these were rejected by the Deputy Commissioner of the Division on the ground that they had not produced the valid tax paying documents. Their appeals were also rejected by the Commissioner (Appeals) by the above Orders In Appeals.

3. The above revision applications have been filed mainly on the ground that the refund of service tax is admissible to them under Notification No.17/2009-ST in respect of the above services used by them in relation to export of goods and the Commissioner (Appeals) has committed an error by rejecting their appeals against the Deputy Commissioner's orders.

4. A personal hearing was offered in these cases on 29.1.18, 07.02.2018 and on 19.03.2018. However, no one from the applicant or the respondent appeared for the personal hearing from which it is implied that the applicants and the respondents are not interested in availing personal hearing.

5. On examination of all 3 revision applications, it is observed at the outset that R.A.No.196/14/ST/2013-RA dated 27.06.12 is filed late by 4 days and its condonation is requested by the applicant vide their letter dated 2.9.13 i.e. after more than one year of filing of the revision application on the ground that the delay has occurred on account

of misplacing of relevant documents in the company by the concerned person. However, the detail of misplaced documents and the concerned person are not given at all in the application. Considering the delay in filing application for condonation of delay after gap of more than 1 year and not mentioning of any specific document misplaced by the company by the concerned person, it is obvious that the reason given by the applicant is not only an afterthought but is very vague and not genuine. Thus, it cannot be considered as a sufficient cause which might have prevented the applicant in filing the revision application in time as stipulated in Section 35EE of the Central Excise Act, applicable to the Finance Act 1994 by virtue of its Section 83. Consequently the Government does not find it a fit case to condone the delay in filing the above revision application.

5. Further, it is noticed that in respect of all the 3 revision applications a fee of Rs.200/- for each application has only been paid by the applicant even when the amount of service tax in each application is more than Rs.1.00 lakh. As per Section 35EE of the Central Excise Act, 1944, read with Section 83 of Finance Act, 1994, a Revision Application is to be accompanied by a fee of Rs.1000/-, where the amount of Service Tax levied by any 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 considered as proper Revision Application by virtue of the above mentioned provision. Since in these cases the fee of Rs.200/- has only been paid, the revision applications in these cases cannot be considered to have been properly filed.

6. Above all, it is evident from the revision applications and orders of the Commissioner (Appeals) that the issue involved in the present proceeding is regarding exemption from service tax Notification No.17/2009-ST which is provided by way of refunding of service tax. Whereas as per 1st Proviso in Section 86 of the Finance Act 1994, read with Section 35EE of the Central Excise Act, 1944, the revision application

can be filed with the Government only against the order of the Commissioner (Appeals) involving the issue relating to rebate of service tax on input services or rebate of duty paid on inputs used in relation to export of services. Since the rebate of service tax is not involved in the present proceeding and the matter relates to exemption from payment of service tax provided by way of refund of service tax under Notification No.17/2009, the Government is of the considered view that the above 3 revision applications are not maintainable under Section 86 of the Finance Act, read with Section 35EE of the Central Excise Act.

7: In view of the above discussions, the revision applications filed by M/s T.C.Terrytex Ltd. are rejected.

(R.P.Sharma)
2.4.18

(R.P.Sharma)
Additional Secretary to the Government of India

M/s. T.C.Terrytex Ltd.,
Village Sarsini, PO-Lalru,
Distt. Mohali, Punjab

G.O.I. Order No. 3/33/18-ST dated 2-4-2018

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
3. The Deputy Commissioner Service Tax Division, Derrabassi, Sadashiv Complex, Chandigarh Ambala Road, Derrabassi, Distt. SAS Nagar (Mohali)
4. The Assistant Commissioner Central Excise Division, Sadashiv Complex, Chandigarh Ambala Road, Derrabassi, Distt: Mohali
5. PA to AS(Revision Application)
6. Guard File
7. Spare Copy.

Attested

Raz
(Ravi Prakash)
OSD (RA)