

REGISTERED
SPEED POST



F.No. 195/448/2016-RA
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.....7/12/18

Order No. 617/18-Cx dated 4-12-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.123-135/CE/DLH/2015 dated 30.11.2015, passed by the Commissioner of Central Excise (Appeals-I), New Delhi

Applicant : M/s Kashish Creations, Rupali Nahar, Bhattar Road, Surat

Respondent : Commissioner of CGST (East Delhi), New Delhi

ORDER

A Revision Application No.195/448/2016-RA dated 22.4.2016 is filed by M/s Kashish Creations, B-43, Swamy Gunati Nagar, Rupali Nahar, Bhattar Road, Surat (hereinafter referred to as the applicant) against the Order-in-Appeal No.123-135/CE/DLH/2015 dated 30.11.2015, passed by the Commissioner of Central Excise (Appeals-I), New Delhi, whereby the applicant's appeal filed against the Order-in-Original has been rejected for not pre-depositing the amount @7.5% of the rebate ordered to be recovered as per Section 35F of the Central Excise Act.

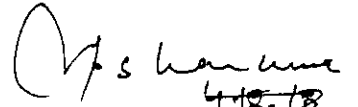
2. The revision application is filed mainly on the ground that that the OIA is erroneous as the Commissioner (Appeals) has not followed the Principle of Natural Justice and no reasonable opportunity was granted to the applicants to make pre deposit of 7.5%.

3. Personal hearing was held in this case on 15.10.2018 and Ms Prabha Mahor, Assistant Commissioner, appeared for the respondent. She averred that revision application is absolutely uncalled for in this case as the OIA is legally proper for the reasons that rebate claims were filed beyond one year and the applicant also did not pre-deposit the amount at the rate of 7.5 % as per Section 35F of the Central Excise Act. But no one appeared for the applicant and no request for any other date of hearing is also made by them from which it is implied that they are not interested in availing personal hearing.

4. The Government has examined the matter and it is found from the Order-in-Appeal that the applicant's appeal before the first appellate authority is rejected solely on the ground that the applicant did not pre-deposit the amount @7.5% of as stipulated in as per Section 35F of the Central Excise Act as a pre-condition for the Commissioner (Appeals) to entertain any appeal. Non-payment of the said amount is not disputed by the applicant also in the revision application and it is not elaborated as to how their appeal could be entertained by the Commissioner (Appeals) when Section 35F itself categorically provides that Commissioner (Appeals) shall not entertain any appeal unless the appellant had pre deposited the amount at

the rate of 7.5% of the duty or the penalty. Since the condition of pre-depositing the amount was not complied with, the rejection of his appeal by the Commissioner (Appeals) on this ground cannot be faulted by the Government. Further, it is also noticed that the revision application has been filed after delay of 23 days. The applicant vide their COD application dated 16.4.16 has stated that their authorized representative was bed ridden and was advised complete bed rest for the period from 15.3.16 to 8.4.16. However, in this case the Government finds that reason given by the applicant is very general as the name of the authorized representative is not specified and no medical certificate advising any rest is attached with the revision application. Therefore, the reason advanced by the applicant cannot be considered as a "sufficient cause" as stipulated in Section 35EE(2) of the Central Excise Act which might have prevented the applicant from presenting the revision application in time. Hence the Govt. does not consider this case as a fit case for condonation of delay of 23 days and as a result the filing of R.A. in this case is hit by time limitation. Consequently, the revision application is also time barred in the light of Section 35EE(2) of the Central Excise Act as per which the revision application was required to be filed within 3 months from the receipt of the OIA which was received in this case on 1.2.16. Besides above, it is also observed that the revision application dated 22.4.16 was not accompanied by a fee of Rs.1000/- which was required to be paid as per sub-Section 3 of Section 35EE of Central Excise Act. As per this Section a fee of Rs.1000/- is mandatorily to be accompanied along with the revision application where the amount of duty and interest demanded, fine or penalty levied by an Officer of Central Excise in the case to which the application relates 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.

5. Accordingly, no interference in the Order-in-Appeal is warranted and the Revision Application is rejected.


(R.P.Sharma) 4-12-18

Additional Secretary to the Government of India 4-12-18

M/s Kashish Creations
B-43, Swamy Gunati Nagar,
Rupali Nahar, Bhattar Road,
Surat-395007

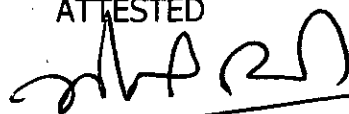
Order No. 617/18-Cx dated 4-12-2018

Copy to:

1. Commissioner of Central Goods & Service Tax (East Delhi), C.R.Building, I.P.Estate, New Delhi-110109.
2. Commissioner of Central Excise (Appeals-1), Room No.134, C.R.Building, I.P.Estate, New Delhi-110109.
3. Assistant Commissioner of Central Excise, Delhi-II, C.R.Building, I.P.Estate, New Delhi-110109.
4. PA to AS(RA)
5. Guard File.

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ATTESTED



(Ashish Tiwari)

Assistant Commissioner