

REGISTERED  
SPEED POST



F.No. 195/11-A/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-110 066

Date of Issue... 2/12/18

Order No. 63/18-Cx dated 5-12-2018 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.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 19/Kol-III/2013 dated 30.3.13, passed by the Commissioner of Central Excise (Appeals-1), Kolkata

Applicant : M/s Adi Loknath Fashion (P) Ltd., Rajarhat, Kolkata

Respondent : Commissioner of Central Goods & Service Tax, Kolkata

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**ORDER**

A revision application No.195/11-A/2016-RA dated 25.1.16 is filed by M/s Adi Loknath Fashion (P) Ltd., Rajarhat, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal No.108-137/CE/DLH/2013 dated 30.03.2013, passed by the Commissioner of Central Excise (Appeals-1), Kolkata, whereby the applicant's appeal filed against the Order of the Additional Commissioner of Central Excise, Kolkata-III Commissionerate, Kolkata, has been rejected.

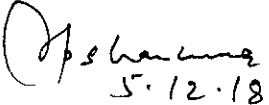
2. The revision application has been filed mainly on the ground that their appeal has been wrongly rejected for non-payment of an amount ordered by the Commissioner (Appeals) under section 35F of the Central Excise Act..

3. The hearing was initially offered on 04.10.2018. But the applicant requested its adjournment vide its letter dated 28.09.2018 for the reason that due to family problem the Director was unable to attend the hearing on this date. Hence, 2nd hearing was offered on 23.10.2018. But its adjournment was also sought on the ground that their main Director was indisposed. Accordingly, 3<sup>rd</sup> hearing was offered on 16.11.2018. But this also remained un-availed and no reason for the same is informed. From non-availment of the hearings on the above 3 dates it is explicit that the applicant is not interested in availing the personal hearing in this case and, therefore, the case is being decided on the basis of available record.

4. The Government has examined the matter and it is observed at the outset that the revision application dated 25.01.16 is not filed within 3 months from the date of receiving the Order-in-Appeal which was received in this case in the month of April 2013 itself. The correct date of communication is not given by the applicant in the revision application and it is wrongly reported as 06.10.2015 which is in fact the date of the receipt of Order of the CESTAT and not the date of receipt of Order-in-Appeal. The fact of receiving of Order-in-Appeal in April'2013 is corroborated by several facts like date of despatch shown in the Order-in-Appeal is 05.04.2013, the location of the applicant is proper Kolkata only and in the applicant's letter dated 09.01.2016 where under the revision application was submitted to the Central government it is clearly mentioned that they had initially filed the appeal against the

Order-in-Appeal before CESTAT, Kolkata on 22.07.2013 which could be possible only when they might have received the Order-in-Appeal in the month of April itself. But even when they had received the Order-in-Appeal in April 2013 itself, they have filed the present revision application on 25.01.2016 which is clearly after delay of more than 2 ½ years. Under sub section 35EE(2) of Central Excise Act, the government is empowered to condone the delay upto 3 months if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within normal period of 3 months. But the reason given by the applicant for delaying the revision application that they had first wrongly filed the appeal before the CESTAT, Kolkata which was rejected vide CESTAT's orders dated 01.10.2015 as non-maintainable and they had again wrongly filed appeal before the CESTAT for second time which was also returned by CESTAT vide order dated 23.12.2015 is not found convincing as wrong filing of appeals before CESTAT repeatedly and particularly second appeal is their gross error and can not be considered as sufficient cause which prevented the applicant from filing the revision application in time before the government. Above all, the govt. does not have authority under aforementioned section 35EE (2) of the Central Excise Act to condone the delay of 2 ½ years in this case and the Government is empowered to condone the delay upto 3 months only at the most. Hence the revision application filed by applicant on 25.01.2016 in this case is patently time-barred. Besides above, it is also noticed that the revision application was not accompanied by a fee of Rs.1000/- which was required to be paid in this case 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. Since in this case the demand of Central Excise duty is Rs.2676288/- and the penalty is Rs.2676288/-, a fee of Rs.1000/- was required to be paid before revision application was filed. But no fee was paid prior to filing of the application and consequently the revision application filed by the applicant in breach of the above statutory condition cannot be considered to have been filed properly and no authority has been empowered to condone non compliance of this condition.

5. Accordingly, the revision application is rejected as non maintainable for the above discussed reason.

  
5.12.18  
(R.P.Sharma)

Additional Secretary to the Government of India

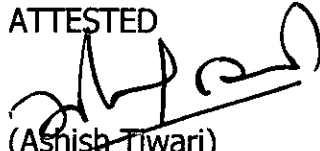
M/s Adi Loknath Fashion (P) Ltd.,  
211, Bus Stand, Rajarhat,  
Kolkata-700135

Order No. \_\_\_\_\_ 631/18-Cx dated 5-12-2018

Copy to:

1. Commissioner of Central Goods & Service Tax, Kolkata-III Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata-700107
2. Commissioner of Customs (Appeals-1), 4<sup>th</sup> Floor, Bamboo Villa, 169, AJC Bose Road, Kolkata-700014
3. Additional Commissioner of Central Excise Kolkata-III Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata-700107
4. PA to AS(RA)
5. ~~Guard File~~

ATTESTED

  
(Ashish Tiwari)

Assistant Commissioner