

F.No.195/233/2017-RA

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F.No.195/233/2017-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:

Order No. 636/2018-Cx dated 5-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-In-Appeal No.332(RKS)CE/JPR-I/2007 dated 15.11.2007 passed by the Commissioner of Customs & Central Excise(Appeals-I), Jaipur

Applicant : M/s Ginni International Ltd., Alwar

Respondent : The Commissioner of CGST, Alwar

ORDER

A Revision Application No.195/233/2017-RA dated 27.6.2017 is filed by M/s Ginni International Ltd., Alwar (hereinafter referred to as the applicant), against the Order-In-Appeal No. 332(RKS)CE/JPR-I/2007 dated 15.11.2007, passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur, whereby the appeal filed by the department against the Orders of Assistant Commissioner of Alwar Division has been allowed.

2. The brief facts leading to the present Revision Application are that the applicant had filed rebate claims in respect of inputs used in manufacturing of exported goods under the Notification no. 21/2004-CE(NT) dt. 06.09.2004 and the same were sanctioned by the original adjudicating authority. However, the Orders-in-Original were challenged by the Department before the Commissioner (Appeals) and the same were set aside by the Commissioner (Appeals) allowing the Departmental appeal vide above mentioned Order-in-Appeal dt. 15.11.2007. The present Revision Application is filed by the applicant mainly on the ground that they have fulfilled all the conditions of Notification no. 21/2004-CE(NT) and the Commissioner (Appeals) has committed an error by setting aside the Orders-in-Original.

3. A personal hearing was held in this case on 29.10.18 and Shri Rajat Dosi, Advocate, appeared for the applicant and reiterated the grounds of revision already pleaded in their application. He also produced the copy of COD application dated 26.10.17 and requested for condonation of delay involved. However, no one appeared for the respondent and no request for any other date of hearing is also received.

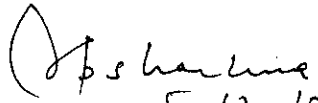
4. On examination of the Revision Application, it is noticed by the Government at the outset that the Revision Application has been filed on 27.06.2017 against the Order of Commissioner (Appeals) dt. 15.11.2007 which was received on 20.11.2007 as per the Revision Application itself. Thus, the Revision Application in this case is presented after more than 9 years and the

reason for the same is stated to be that due to oversight they had earlier filed the appeal against the Order-in-Appeal before CESTAT which was rejected vide CESTAT's order dt. 12.09.2016 for lack of jurisdiction over the rebate matters. Whereas as per Section 35EE(2) of the Central Excise Act, 1944, a Revision Application is required to be made within three months from the date of the receipt of Order-in-Appeal and it is admitted by the applicant also in their Application dt. 26.10.2017 for the condonation of delay that the Revision Application in this case should have been filed before the Government of India on or before 19.02.2008. Under the aforesaid Sub Section, the Government is empowered to condone the delay up to three months only if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the normal period of three months. But filing of wrong appeal before the CESTAT and its pursuance for more than 8 years until it was rejected by CESTAT itself cannot be construed as sufficient cause as for such wrong filing of the Appeal no one else can be blamed and this grave lapse was committed by the applicant himself despite it is evident from the Section 35B of the Central Excise Act, 1944 that no appeal relating to the rebate of duty lies before the CESTAT. The applicant has relied upon several case laws in their afore mentioned COD application to emphasize that delay on account of wrong persuasion of appeal before other appellate forum can be condoned. However, the Government is of the clear view that condonation of delay for such a long time mainly due to wrong filing of appeal cannot be accepted as a general rule on the basis of relied upon decisions as these are case specific only and due sanctity to the limitation period provided in Section 35EE should be accorded. Above all, in the present case the entire delay is not attributable to wrong filing of appeal before CESTAT only. Instead a long delay of more than 9 months has been committed in this case even after the CESTAT had rejected the appeal on 12.09.2016. No convincing reason for this additional delay of 9 months has been given and the applicant has merely stated that it was caused due to carelessness on behalf of the Chartered Accountant who was handling this case. But this version is manifestly very vague and general in nature and cannot be considered as a sufficient cause by any yardstick. Instead the said delay of 9 months even after rejection of their appeal by the CESTAT clearly reflects that the applicant did not

pay any heed to this matter even after wasting long period before CESTAT and their casual approach continued even thereafter. Moreover, as mentioned above, the Government is authorized to condone the delay up to three months only and that too for the sufficient cause only and not for the flimsy reason like the concerned Chartered Accountant did not handle the matter properly. Thus the Government is unable to condone the delay beyond three months in any circumstance. Hence, the Revision Application filed in this case after enormous delay is patently time-barred.

5. Besides above, it is also observed that the Revision Application dated 27.06.2017 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. They did not pay the fee of Rs. 1000/- despite of Section Officer (R.A.)'s letter No. 195/233/17-RA dated 30.6.2017. Since the required fee in this case was not paid before or at the time of filing the Revision Application, the present Revision Application cannot be considered to have been filed properly and the same is liable for rejection for this reason also.

6. In view of the above discussions, the Revision Application is rejected without going into the merits of the case.


5.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Ginni International Ltd.,
SP-2(1A) & (2), RIICO Industrial Area,
Neemrana, Distt. Alwar-305705,
Rajasthan.

Order No. 636/2018-Cx dated 5-12-2018

Copy to:

1. The Commissioner of CGST, 'A' Block, Surya Nagar, Alwar-301001.
2. The Commissioner (Appeals), Central Excise & Customs, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur-302005.
3. The Assistant Commissioner of CGST, Division- A Alwar, Ground Floor, Central Excise Building, 'A' Block, Surya Nagar, Alwar-301001.
4. P.A. to A.S.(R.A.)
5. Guard File
6. Spare copy

ATTESTED

(Ashish Tiwari)
Assistant Commissioner