

REGISTERED  
SPEED POST



F.No. 195/225-226/2017-R.A.  
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: 11/12/18

Order No. 659-660/2017-Ex dated 6-12-18 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 Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-In-Appeal No. 53-54(DKV)CE/JPR-I/2011 dated 08.02.2011, passed by the Commissioner of Customs & Central Excise (Appeals-I), Jaipur

Applicant : M/s KEI Industries Ltd., Bhiwadi

Respondent : The Commissioner of CGST, Alwar

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**ORDER**

Two Revision Applications No. 195/225-226/2017-R.A. dt. 09.06.2017 are filed by M/s KEI Industries Ltd., Bhiwadi (hereinafter referred to as the applicant), against the Order-In-Appeal No. 53-54(DKV)CE/JPR-I/2011 dated 08.02.2011, passed by the Commissioner of Customs & Central Excise (Appeals-I), Jaipur, whereby the appeals filed by the applicant against the Orders of Assistant Commissioner of Bhiwadi Division have been rejected.

2. The brief facts leading to the present Revision Applications are that the applicant had filed two rebate claims under Rule 18 of the Central Excise Rules, 2002 and the same were rejected by the original adjudicating authority. The applicant filed appeals before the Commissioner (Appeals) against the Orders-in-Original, but the same are also rejected by the Commissioner (Appeals) vide above mentioned Order-in-Appeal dt. 08.02.2011. The present Revision Applications are filed by the applicant mainly on the grounds that they have fulfilled all conditions of Notification no. 19/2004-CE(NT) dt. 06.09.2004 and Notification no. 93/2004-Cus dt. 10.09.2004 under which they were issued advance license to import duty free inputs does not contain any condition debarring the license holder to export the goods on payment of duty under rebate claims under Rule 18 of Central Excise Rules.

3. A personal hearing was held in this case on 12.11.2018 and Shri P.K. Mittal, Advocate, appeared for the applicant and reiterated the grounds of revision already pleaded in their applications. Further he also furnished additional submissions dated 19.11.2018 emphasising that their revision application should be allowed. However, no one appeared for the respondent and no request for any other date of hearing is also received.

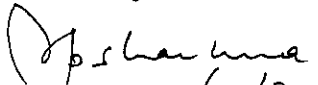
4. On examination of the Revision Applications, it is noticed by the Government at the outset that the Revision Applications have been filed on 09.06.2017 against the Order of Commissioner (Appeals) dt. 08.02.2011 which was received on 17.02.2011 as mentioned in the Revision Applications itself. Thus, the Revision Applications in this case are presented after more than 6

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. 27.04.2017 for the 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. 08.06.2017 for the condonation of delay that the Revision Application in this case should have been filed before the Government of India. 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 6 years until it was dismissed 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 the judgment of Hon'ble Supreme Court in the case of M.P. Steel Corporation vs. CCE, 2017(50) S.T.R. 205(S.C.) in their afore mentioned COD application to emphasize that delay on account of wrong persuasion of appeal before another 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 decision as the same is case specific only and due sanctity to the limitation period provided in Section 35EE also needs to be accorded which has not been invalidated by any competent court and is still in the statute. Since the Government is not authorized to condone the delay beyond three months in any circumstance under the above stated Provision, the Revision Applications filed in this case after enormous delay are patently time-barred.

5. Besides above, it is also observed that the Revision Applications dated 09.06.2017 were not accompanied by a fee of Rs. 1000/- which was required to be paid for each Revision Application 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/- for each Revision Application despite of Section Officer (R.A.)'s letter No. 195/225-226/17-RA dated 19.6.2017. Since the required fee in this case was not paid before or at the time of filing the Revision Applications, the present Revision Applications cannot be considered to have been filed properly and the same are liable for rejection for this reason also.

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

  
6.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

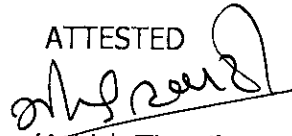
M/s KEI Industries Ltd.,  
SP-920, RIICO Industrial Area,  
Bhiwadi, Rajasthan.

Order No. 659-660 /2018-Cx dated 6-12-2018

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- Bhiwadi, 'A' Block, Surya Nagar, Alwar-301001.
4. Mr. P.K. Mittal, Advocate, 171, Chitra Vihar, Vikas Marg, Delhi-110092.
5. P.A. to A.S.(R.A.)
6. Guard File
7. Spare copy

ATTESTED



(Ashish Tiwari)

Assistant Commissioner