

REGISTERED
SPEED POST



F.No. 196/01/ST/18—R.A.
196/01A/ST/18---R.A.
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.. 13/12/18

Order No. 72-73/2018-CX dated 10-12-2018 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 Orders-in-Appeal Nos. 66(RK)ST/JPR/2017-18 dated 05.02.2018j & 66(RK)ST/JPR/2017-18 dated 05.03.2018, passed by the Commissioner (Appeals), Jaipur.

Applicant : M/s Manu Tiling Co. Pvt. Ltd., Alwar (Raj.)

Respondent : Commissioner of CGST, Alwar (Rajasthan).

ORDER

Two Revision Applications Nos. 196/01/ST/18-RA and 196/01A/ST/18-RA, both dated 04.05.2018, have been filed by M/s Manu Tiling Co. P. Ltd., Alwar (hereinafter referred to as the applicant) against the Orders-in-Appeal Nos. 66(RK)ST/JPR/2017-18 dated 05.02.2018 & 67(RK)ST/JPR/2017-18 dated 05.03.2018, passed by the Commissioner (Appeals) Jaipur, whereby the applicant's appeals against the orders-in-original have been rejected.

2. The brief facts leading to the present proceeding before the Government are that the applicant had filed refund/rebate claims for service tax paid on exported goods and the same were rejected by the original adjudicating authority on the ground that the said services were used beyond place of removal as envisaged in notification no. 41/2012-ST dated 29/06/2012 and, therefore, the rebate was not admissible. Being aggrieved, the applicant filed appeals against this order before Commissioner (Appeals) who has also upheld the orders-in-original vide the above said orders-in-appeal dated 05/02/2018 and 05/03/2018.

3. The applicant has filed the present revision applications mainly on the ground that the Commissioner (Appeals) should have allowed the rebate as the Notification no. 41/2012 dated 29/06/2012 was amended retrospectively by Notification No. 01/2016-ST dated 03/02/2016, read with Section 160 of the Finance Act, 2016, as per which the rebate of service tax paid on services used beyond factory or any other place or premises of production or manufacture of goods for their export was admissible.

4. A personal hearing was offered on 17/09/2018 which was availed by Sh. B.L. Yadav, Consultant, for the applicant who reiterated the grounds of revision already pleaded in their application. But no one appeared for the respondent and no request has been received from them for any other date of hearing in this matter from which it is implied that they do not require any personal hearing in this case.

5. The Government has examined the matter and has found at the outset that the revision application against order-in-appeal dated 05/02/2018 was not accompanied by a fee of Rs.1000/- which was required to be paid in this case as per Section 35EE(3) of the Central excise Act, 1944. 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 amount of revenue involved was Rs. 1,81,659/-, a fee of Rs 1000/- was required to be accompanied along with the revision application. But no fee was paid prior to filing of the application no. 196/01A/ST/18-RA and consequently the said revision application filed by the applicant in breach of the above statutory condition cannot be considered to have been filed properly. Further no authority has been empowered to condone non-compliance of this condition. The said fee of Rs.1000/- was, however, paid subsequently on 23/05/2018 as per challan of HDFC Bank produced later. But such late payment is not permitted under above Section and even if it is taken into account, the revision application will be considered to have been filed properly on 23/05/2018 only when fee of Rs.1000/- was paid by which this

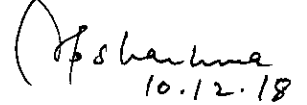
application was hit by time limitation as revision application can be filed within 3 months of the communication of the Order-in-Appeal only which was received by the applicant on 05.02.18 itself. Accordingly, this revision application is rejectable as non-maintainable for the above discussed reason only.

6. Coming to the merit of both the revision applications, it is observed that their rebate claims in both the cases were earlier rejected by the original adjudicating officer on the ground that the input services had been used beyond the place of removal. The Commissioner (Appeal) also, vide his earlier order-in-appeal No. 418-419(AK) ST/JPR/2016 dated 21.11.2016, did not interfere with the orders-in-original and rather held that the refund is admissible to them subject to the condition that the applications of the rebate claims of service tax shall be made within the period of one month from the date of commencement of the Finance Act, 2016 as envisaged under Section 160 of the Finance Act, 2016 which was enacted on 14/05/2016. Accordingly as per the order of the Commissioner (Appeal) passed earlier, the applicant was required to file rebate claims by 13/06/2016. But the same was not possible as the orders-in-appeal had been passed much after 13/06/2016. However, still the applicant did not challenge the above referred order-in-appeal before the government on the ground that the rebate of service tax could not be claimed as per directions of the Commissioner (Appeal) and their appeals against the orders-in-original should have been decided by the Commissioner (Appeal) in the light of Section 160 of the Finance Act, 2016 and new notification no. 1/2016-ST whereby the notification 41/2012-ST was amended from retrospective effect. Instead, the applicant filed fresh rebate claims following the order of the Commissioner

(Appeal) and thereby the earlier order-in-appeal dated 21.11.2016 attained finality and their original rebate claims also stood rejected as was done by the original adjudicating authority in the beginning. Their rebate claims filed subsequently as per Commissioner (Appeal)'s order dated 21/11/2016 were rejected and the same were upheld by the Commissioner (Appeal) for the second time for the obvious reason that the rebate claims filed in December, 2016 were patently time barred as the same could not be filed beyond 13/06/2016 as per Section 160 of the Finance Act, 2016 itself. As already discussed above in detail, this time limitation set forth in Section 160 itself cannot be denied and this was well known to the applicant when they were advised to file the rebate claims by the Commissioner (Appeal) in his earlier orders-in-appeal. The applicant's contention that the time consumed before the Commissioner (Appeal) for persuasion of their appeals from 14/05/2016 onwards should be abated and they should be allowed one month's time from the date of the orders of the Commissioner (Appeal) for filing the rebate claims is not sustainable as the time limit for filing rebate claims as per amended provision by 13/06/2016 is statutory in nature and cannot be diluted by the government on any ground. Moreover, the proceeding before the Commissioner (Appeal) at the behest of the applicant was initiated even much before the amended provisions came into force and it cannot be countenanced that appeal was pursued wrongly under some wrong belief. As discussed above, since the applicant has accepted the earlier Order of the Commissioner (Appeal) dated 21/11/2016 and fresh rebate claims could not be entertained by the lower authorities in the month of December, 2016, in the light of time limitation prescribed in Section 160 of the

Finance Act, 2016, the subsequent orders passed by the lower authorities which are under challenge in the present proceeding cannot be legally faulted at this juncture by the government.

7. Accordingly, the above referred revision applications filed by the applicant are rejected.


10.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

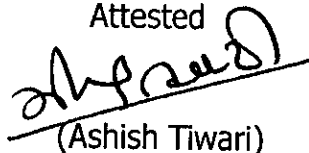
M/s Manu Tiling Co. Pvt. Ltd.,
H-193 to H-202, RIICO Ind. Area, Phase-II, Behror,
Distt.-Alwar(Raj.).

G.O.I. Order No. 72-73 /18-Cx dated 10-12-2018

Copy to:-

1. Commissioner, CGST and Central Excise Commissionerate, A-Block, Surya Nagar, Alwar.
2. Commissioner (Appeals) and Additional Director General DGGSTI, Jaipur, C-62, Sarojini Marg, C-Scheme, Jaipur-302001.
3. P.S to AS (RA).
- ✓ 4. Guard file.

Attested



(Ashish Tiwari)

Assistant Commissioner (Revision Application)