

F. No. 195/33/16-R.A.
F. No. 195/34/16-R.A.
F. No. 195/35/16-R.A.
F. No. 195/36/16-R.A.

SPEED POST



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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 22/9/22

Order No. 46-47/2022-CX dated 22-09-2022 of the Government of India, passed by Sh. Sandeep Prakash, 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. CAL/EXCUS/000/APP/125-15-16, CAL-EXCUS/000-APP-126-15-16, CAL/EXCUS/000/APP-127-15-16; CAL/EXCUS/000/APP129-15-16 all dated 25.08.2015, passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-II), Cochin.
- Applicant : M/s Precot Meridian Ltd., Palakkad, Kerala.
- Respondent : The Commissioner of CGST & Central Excise, Calicut.

ORDER

Four Revision Application Nos. 195/33/2016-R.A. dated 08.03.2016, 195/34/16-R.A., 195/35/16-R.A. and 195/36/16-R.A., all dated 09.03.2016, have been filed by M/s. Precot Meridian Ltd., Palakkad, Kerala (hereinafter referred to as the Applicant) against Orders-in-Appeal passed by the Commissioner (Appeals-II), Customs, Central Excise & Service Tax, Cochin. The Commissioner (Appeals) has upheld the orders of the original authority rejecting/ restricting the rebate claims filed by Applicants herein under Rule 18 of the Central Excise Rules 2002, as per details below:

S. No	Period	Rebate claimed (Rs.)	OIO No. & date	Allowed/ Rejected	OIA No. & date	Result of Appeal
1.	16.05.09 to 04.06.09	3,49,632	52/2010-CE (R) dt. 22.07.2010	Rejected	CAL-EXCUS-000-APP-125-15-16 dt. 25.08.2015	Dismissed
2.	11.05.09 to 06.07.09	15,78,758	18/2010-CE (R) dt.27.10.2010	Rejected	CAL-EXCUS-000-APP-126-15-16 dt. 25.08.2015	Dismissed
3.	07.12.08 to 06.07.09	6,08,295	65/2010-CE (R) dt.29.09.2010	Rs.3,83,698 (Sanctioned) Rs.2,24,597 (Rejected).	CAL-EXCUS-000-APP-127-15-16 dt. 25.08.2015	Dismissed
4.	07.012.08 to 06.07.09	4,43,278	21/2011-CE (Refund) dt. 03.10.2011	Rs.3,65,498 (Sanctioned) Rs.77,780 (Rejected)	CAL-EXCUS-000-APP-129-15-16 dt. 25.08.2015	Dismissed

2. Briefly stated, the Applicants herein exported cotton yarn on payment of duty and claimed rebate under Rule 18, ibid. The rebate claims involved in RA Nos. 195/33 & 34/16-R.A. were rejected on the grounds that the Applicant had paid duty on the export goods, even though the same was totally exempted by virtue of Notification No. 29/2004-CE(NT) dated 09.07.2004, as amended by Notification No. 58/2008-CE dated 07.12.2008. In

respect of the RA Nos. 195/35&36/16-R.A., the rebate claims were restricted by rejecting the claims corresponding to the denied amount of CENVAT credit from which the duty was paid. The appeals filed by the Applicants herein before the Commissioner (Appeals) have been rejected, in terms of the Orders-in-Appeal tabulated hereinbefore.

3. The revision applications have been filed, mainly, on the grounds that at the relevant time by virtue of another Notification No. 59/2008-CE dated 07.12.2008 the effective rate of duty was 4% for cotton yarn; that, therefore, at the relevant time two unconditional exemption notifications viz. Notification No. 29/2004-CE(NT), as amended by Notification No. 58/2008-CE, specifying 'Nil' duty and another Notification No. 59/2008-CE specifying 4% duty on the same goods were in operation; that the lower authorities have, therefore, incorrectly concluded that the exemption granted under Notification No. 29/2004, as amended, by Notification No. 58/2008 was absolute; and that the Applicant was at liberty to choose either of the notifications and pay duty accordingly. Department has filed reply vide letter C. No. IV/16/545/2015-RC dated 01.09.2016 and vide letter C. No. IV/16/541/2015-RC dated 17.08.2016.

4. Personal hearing, in virtual mode, was held on 19.09.2022. Ms. Archana Jain, CA appeared for the Applicant and reiterated the contents of the RA. She highlighted that at the relevant time two notifications, viz. 29/2004-CE, as amended by 58/2008-CE, prescribing 'Nil' rate of duty and 59/2008-CE prescribing 4% duty were in existence, and it was open for the Applicant to choose the notification beneficial to him. No one appeared for the respondent department nor any request for adjournment has been received. It is, therefore, presumed that the department has nothing to add in to the matter. Additional written submissions have been filed by the Applicant, vide e-mail dated 20.09.2022.

5. The Government has carefully examined the matter. It observed that the Orders-in-Appeal impugned herein were received by the Applicants on 07.09.2015 whereas the subject RAs have been filed on 08.03.2016 (RA No. 195/33/-16-R.A.) and on 09.03.2016

(remaining 03 RAs). Thus, these RAs have been filed more than 06 months after the date of communication of the impugned Orders-in-Appeal. Upon being pointed out by the office, identical condonation of delay applications, all dated 12.07.2016, have been filed requesting for condonation of delay as the Legal/ Tax Consultant was attending to his mother who had suffered a head injury. As per sub-section (2) of Section 35EE of the Central Excise Act, 1944:

"(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

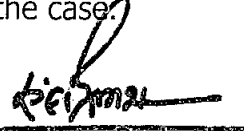
Provided that the Central Government may, if it is satisfied that the applicant ^{was} prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

Thus, a revision application is required to be made within a period of three months from the date of communication of the order against which application is being made. The Government, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within this period of three months, may allow an extension of further period of three months. In other words, a revision application is required to be filed within a period of three months and the Government, upon sufficient cause being shown, can condone the delay upto a further period of three months, i.e., a revision application has to be filed within a period of six months, including the condonable period of three months. In the present case, the revision applications have been filed even beyond the condonable period. The Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {(2008) 2021 ELT 163 (SC)}, held that an Appellate Authority, being a creature of statute, has no power to allow the appeal to be presented beyond the condonable period, as provide in the statute. The ratio of Singh Enterprises (supra) is squarely applicable in the present case as well, since the Government exercises it's revisionary powers as per the statute, i.e., Section 35 EE ibid

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and, therefore, cannot condone the delay beyond the condonable period provided in sub-section (2) of Section 35EE.

6. In view of the above, the Government is constrained to reject the subject revision applications on the grounds of limitation without traversing the merits of the case.



(Sandeep Prakash)

Additional Secretary to the Government of India

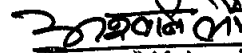
M/s. Precot Meridian Ltd.,
Kanjikode West, Palakkad -678623
Kerala.

G.O.I. Order No. 46-49/22-CX dated 22-9-2022

Copy to: -

1. The Commissioner of CGST & Central Excise, Central Revenue Building, Manachira, Calicut – 673001.
2. The Commissioner of Central Excise, Customs & Service Tax (Appeals-II), Central Revenue Building, I.S. Press Road, Cochin.
3. Ms. Archana Jain, CA, F-13, Kiriti Nagar, Near Derawal Bhawan, New Delhi – 110015.
4. PS to AS (RA).
5. Guard File.
6. Spare Copy

ATTESTED



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