

**SPEED POST**



F. No. 195/161/SZ/2019-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.....22/05/23

Order No. 86/2023-CX dated 22-05-2023 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. TTD-EXCUS-000-APP-141-18-19 dated 28.02.2019, passed by the Commissioner of Central Tax and Customs (Appeals), Guntur.

Applicant : M/s Shivtek Industries Pvt. Ltd., Kurnool.

Respondent : The Commissioner of CGST & Central Excise, Tirupati.

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**ORDER**

A Revision Application No. 195/161/SZ/2019-RA dated 02.05.2019 has been filed by M/s Shivtek Industries Pvt. Ltd., Kurnool (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TTD-EXCUS-000-APP-141-18-19 dated 28.02.2019, passed by the Commissioner of Central Tax and Customs (Appeals), Guntur. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 169/2017-18-R dated 09.03.2018, passed by the Assistant Commissioner of Central Tax, Kurnool and rejected the appeal filed by the Applicants herein.

2. Briefly stated, the Applicants herein filed a refund application for Rs. 17,23,402/-, under Section 11B of the Central Excise Act, 1944, on 11.12.2017. Out of the total claim amount of Rs. 17,23,402/-, an amount of Rs. 11,00,000/- pertained to unutilized amount lying in their PLA account; the amount of Rs. 4,89,464/- pertained to Central Excise duty paid on finished goods, which were destroyed in fire accident that occurred in the factory in October, 2016 for which later remission of duty was granted by the department; and the amount of Rs. 1,33,938/- pertained to excess CENVAT credit debited on inputs contained in the finished goods, packaging materials etc. destroyed in the fire accident. The original authority, vide above mentioned Order-in-Original dated 09.03.2018, sanctioned refund of Rs. 11,00,000/-, but rejected the balance amount of Rs. 6,23,402/-, as time barred. The appeal filed by the Applicant herein has been rejected.

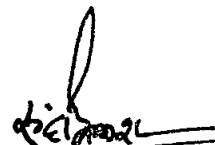
3. The Revision Application has been filed challenging rejection of refund claim pertaining to the Central Excise Duty paid on the finished goods, which were destroyed in the fire accident and in respect whereof remission of duty was granted, i.e., the refund amounting to Rs. 4,89,464/-. The revision application has been filed, mainly, on the grounds that, initially, duty of Rs. 86,45,401/- was paid on 09.11.2016 on provisional basis; that on 23.12.2016, the final liability was informed to the Range Superintendent and then excess amount of Rs. 1,33,833/- became payable; that the amount was paid provisionally due to pressure from the Range Superintendent and, therefore, the provisional duty paid is to be treated as duty paid under protest; that the limitation of one year under Section 11B does not apply to the duty paid under protest; that remission of duty under Rule 21 of the Central Excise Duties Rule, 2002 is the outcome of the quasi-judicial process and, therefore, limitation is to be counted in terms of 'relevant date', under clause (ec) of the Explanation clause (B), under Section 11B; that, therefore, the limitation should start from the date of receipt of the Commissioner's orders



23.12.2016, in respect of the duty amount paid on goods destroyed in fire, i.e., Rs. 4,89,464/- (an amount included in the total amount of Rs. 86,45,401/-), the relevant date is being taken as the date of filing the ER1 return for the month of October, 2016. It is further observed that other than the limitation, no other reasons have been cited by the authorities below for rejection of the refund claim in respect of the subject amount.

5.3 In view of the above, the Government holds that the refund claim for Rs. 4,89,464/- was filed within the period of limitation and is as such admissible.

6. The Revision Application is, accordingly, allowed with consequential relief and the orders of the authorities below are set aside, in so far as they relate to rejection of refund claim for Rs. 4,89,464/-.



(Sandeep Prakash)

Additional Secretary to the Government of India

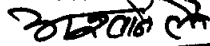
M/s Shivtek Industries Pvt. Ltd.,  
Survey No. 62/A Part, Near SRAAC Ltd.,  
Gondiparla, Kurnool-518004.  
Andhra Pradesh.

G.O.I. Order No. 86/23-CX dated 22-05-2023

Copy to: -

1. The Commissioner of CGST & Central Excise, Tirupati, 9/86, Amaravathi Nagar, West Church Compound, Tirupati-517 502.
2. The Commissioner of Central Tax & Customs (Appeals), IIIrd Floor, C.R. Building, Kannavarithota, Guntur-522 004.
3. Shri Aditya Mishra, YSR & Associates, E-510, East Wing, 5<sup>th</sup> Floor, SVSS Nivas, Road No. 1, Czech Colony, Erragadda, Opp. Gokul Theatre, Hyderabad – 500 018.
4. PPS to AS (RA)
5. Guard File.
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED



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राजस्व विभाग / Department of Revenue  
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