

**SPEED POST**



F. No. 195/03/NZ/2024-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... 09/09/24..

Order No. 31/2024-CX dated 09-09-2024 of the Government of India, passed by Ms. Shubhagata Kumar, 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.525(SM)CE/JPR/2018, dated 17.12.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.

Applicant : M/s KEC International Ltd., Jaipur.

Respondent : Pr. Commissioner of CGST, Jaipur.

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**ORDER**

A Revision Application No. 195/03/NZ/2024-R.A. dated 24.05.2024, has been filed by M/s KEC International Ltd., Jaipur (hereinafter referred to as the Applicant) against Order-in-Appeal No.525(SM)CE/JPR/2018 dated 17.12.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur. The Commissioner (Appeals) has upheld O-I-O No. 02/Div-D/Adj/2017 dated 30.11.2017 passed by the Assistant Commissioner, Central Goods & Service Tax Division-D, Jaipur.

2. Brief facts of the case are that the Applicants are engaged in manufacture of Galvanized Towers & Structures falling under Tariff sub-Heading No. 7308 of First Schedule of the Central Excise Tariff Act, 1985. During the course of audit of the records of the Applicants it was found that the Applicants had wrongly cleared 219.035 MT Bolt, Nut & Washer on payment of duty amounting to Rs. 25,70,032/ on exported goods under rebate claim by wrongly availing exemption Notification No. 19/2004- C-E(NT) dated 06.09.2004 during the period November, 2004 and December, 2014. Accordingly, the Applicants were issued a Show Cause Notice, wherein recovery of Rs.25,70,032/- along with interest was proposed. Vide the above referred O-I-O dated 30.11.2017, the demand along with interest was confirmed. Aggrieved, the Applicants filed an appeal with the Commissioner (Appeals). Vide the impugned O-I-A the appeal filed by the Applicants has been rejected.

3. The revision application has been filed on the grounds that the Applicants duly filed the appeal within 3 months of receiving the impugned OIA before the CESTAT, New Delhi under the provisions of Sec-35B of the Central Excise Act,1944.; that the issue involves classification of goods; the rebate automatically stands allowed; that there is no dispute in or in relation to rebate sanction or procedures as such.

4. Personal hearing, in virtual mode, was held on 05.09.2024. Sh. Alok Kothari, Advocate appeared for the Applicant. It was pointed out that this RA has been filed with a delay of 1869 days delay, which is far beyond the condonable period under section 35 EE

of the Central Excise Act, 1944. The Advocate reiterated his written submissions and stated that the delay was because they were not sure whether to file the appeal and with which forum. It was also pointed out that even if the period upto Hon'ble CESTAT's order is excluded, the delay is around two years, which is beyond the power of condonation of the Revisionary Authority. 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.

5. An application for condonation of delay has been filed stating that the reason for delay in filing the appeal is purely based on interpretation of the facts of the case and not due to ignorance of the applicant.

6. The Government has examined the matter. The Orders-in-Appeal impugned was received by the Applicants on 24.12.2018, whereas the present revision application has been filed on 24.05.2024. In the interim, the Applicants had filed an appeal before the CESTAT in 2019, which was rejected by CESTAT, as non-maintainable, vide order dated 23.08.2022. The order of CESTAT dated 23.08.2022 was certified by the Deputy Registrar on 26.08.2022. Thus, the Applicant took almost 2 years in filing the revision application even after passing of order by the Hon'ble CESTAT. 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 its revisionary powers as per the statute, i.e., Section 35 EE ibid and, therefore, cannot condone the delay beyond the condonable period provided in sub-section (2) of Section 35EE of the Central Excise Act, 1944. They had sufficient time at hand, to file the revision application after the receipt of the Hon'ble CESTAT's order. As such, the delay from 26.08.2022, i.e., the date of receipt of the CESTAT order till filing of the present application, on 24.05.2024, is un-explained. Therefore the Government finds the subject revision application to be hit by limitation as it has been filed beyond the condonable period and the delay is not condonable.

7. In view of the above, the revision application is rejected as time barred.

*Shubhagata Kumar*  
9/9/24

(Shubhagata Kumar)  
Additional Secretary to the Government of India

M/s. KEC International Ltd.,  
14-15., Industrial Area, Jhotwara,  
Jaipur-302012

G.O.I. Order No. 31 /24-CX dated ~~09-09~~ 2024.

Copy to: -

1. The Pr. Commissioner of CGST Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005.
2. The Commissioner of Central Goods & Service Tax (Appeals), New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005.
3. Sh. Alok Kumar Kothari, Advocate, A-92, Manish Marg, Nemi Nagar, Gandhi Path, Vaishali Nagar, Jaipur-302021.
4. PPS to AS (RA).
5. Guard File.
6. Notice Board.

✓ spare copy.

*Shailendra Kumar Meena*  
9/9/24  
ATTESTED  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
नई दिल्ली / New Delhi