

REGISTERED

SPEED POST



F.No. 196/31/ST/16—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.....

Order No. 09/18-CX dated 01-03-18 of the Government of India,  
passed by Shri R. P. Sharma, 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 read with Section 83 of the Finance Act,  
1994 against the Order-in-Appeal No.79/ST-II/KOL/16-17  
dated 24/06/2016, passed by Commissioner (Appeals-II),  
Central Excise Kolkata.

Applicant : M/s. Goyal Ispat Udyog , Howrah.

Respondent : Commissioner of Central Excise & Service Tax  
Commissionerate, Kolkata

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## **ORDER**

A Revision Application 196/31/ST/16—R.A. dated 30.08.2016 is filed by M/s Goyal Ispat Udyog , Howrah (hereinafter referred as applicant) against order in original No. 79/ST-II/KOL/16-17 dated 24.06.2016 passed by Commissioner of Central Excise (Appeals), Kolkata whereby the applicant's appeal filed against the order of the Assistant Commissioner of Service Tax has been rejected.

2. The brief facts leading to the filing of the Revision application are that the applicant filed rebate claims for service tax under Notification No. 41/2012 Service Tax dated 29.06.2012 against the service tax paid on Security services, Cargo handling service and Port services etc. which were claimed to have been used in relation to export of goods. However, these were rejected by the jurisdictional Assistant Commissioner holding rebate claim as time barred on the ground that the applicant had filed rebate claim on 23.03.2015 against the export of good on 26.05.2011, 18.07.2011 and 06.02.2012. The applicant's appeal against the order of the Assistant Commissioner was also rejected by Commissioner (Appeals) vide above referred Order In Appeal and thereafter the Revision application has been filed by applicant before Government mainly on the grounds that their substantive claim has been rejected merely for on procedural grounds that they did not file rebate claim within one year of the date of export.

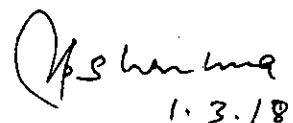
3. A personal hearing was earlier offered on 16.01.2018 and in response the applicant requested for adjournment on the ground that weather condition was not good in Delhi. The Assistant Commissioner of Central Tax, Belly Division-I, Kolkata, also requested for fixing fresh personal hearing in the second week of February 2018. Accordingly, the personal hearing was fixed for the second time on 07.02.2018 which was attended by Sh. H.K. Pandey, Advocate, for the applicant

who furnished additional written submissions during the hearing which are the repetition of the above stated grounds of revisions only. He also placed reliance on Bombay High Court's decision in the case UM Cables Limited Vs. Union Of India 2013 (293) ELT 641 (Bom.). However, no one appeared from the respondent and instead the Assistant Commissioner has sent written submissions vide letter dated 05.02.2018 contending therein that neither the notification nor the statute empowers the rebate sanctioning authority to condone the delay and the applicant's claim has been rejected correctly by the Assistant Commissioner and Commissioner (Appeals).

4. The Government finds that the Section 11B of the Central Excise Act, made applicable to Service Tax matters by virtue of Section 83 of the Finance Act 1994, clearly stipulate that a refund/rebate claim can be filed by the claimant within one year from the export of goods. This condition for filing the rebate claim within one year from the date of export of goods is prescribed in para (B) (3) (g) of Notification 41/2012 dated 29.06.2012 also. Thus, the filing of rebate claim within one year from the export of goods is a core condition of the above cited notification and no provision is provided in the said notification or elsewhere to relax the time limitation of one year for filing the rebate claim. Delayed filing of rebate claims has not been disputed by the applicant also and the applicant has only contended that time limitation is only a procedural condition. But as discussed above, the government is of clear view that time limitation of one year for claiming rebate of service tax is a substantive and a crucial condition and no authority can sanction a rebate of service tax where a claim is filed beyond one year from the date of export. The decision of the Bombay High Court in the case of UM Cable Ltd., 2013 (293) ELT 641 (Bom.), relied upon by the applicant, is also not relevant to the present proceeding as the issue regarding filing of rebate of service tax beyond

one year is not dealt in the said decision and it only dealt with the matters related to rebate of duty of excise under Notification No. 19/2004CE in totally different context. Other case laws cited in the revision application are also not found applicable here as in none of the decisions it has been held that time limitation of one year specified under section 11B of the Central Excise Act and Notification No. 41/2012 can be condoned by any authority dealing with rebate of duty or tax. Hence, the lower authorities have rightly rejected the applicant's rebate claims which were filed undoubtedly beyond one year period.

5. Accordingly, the Revision Application filed by M/s. Goyal Ispat Udyog, Howrah, is rejected.

  
1.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

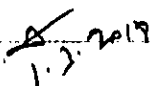
M/s. Goyal Ispat Udyog,  
26, Ramlal Mukherjee Lane, 2<sup>nd</sup> floor,  
Salkia, Howrah- 711106

G.O.I. Order No. 09 /18-Cx dated 01-03-2018

Copy to:-

1. Commissioner of Central Excise, Commissionerate, Delhi-II, GGN, Haryana.
2. Commissioner of Central Excise, (Appeals), Delhi-III, GGN, Haryana.
3. Deputy Commissioner, Central Excise Division, Rewari, Haryana Model Town Road, Opp. Hotel Skylark, Jalandhar.
4. PA to AS(Revision Application)
5. Sh. Abhishek Jaju, Advocate, 472, Delhi Apartment, Plot No-15-C, Sector-22, Dwarka, New Delhi-110077
- ✓ 6. Guard File
7. Spare Copy

ATTESTED

  
1.3.2018

(Debjit Banerjee)  
Sr. Technical Officer (R.A.)