

REGISTERED  
SPEED POST



F.No. 195/289/2008—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. 1.09/2018 -CX dated 01-03-2018 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 Order-in-Appeal No.492/KKG/RTK/07 dated 12/12/2007 passed by the Commissioner of Central Excise (Appeals), Gurgaon.

Applicant : M/s Punjab Stainless Steel Industries, Kundli (Haryana)

Respondent : Commissioner of Central Excise, Rohtak

\*\*\*\*\*

**ORDER**

A Revision Application No. 195/289/2008-R.A. dated 13/8/2008 is filed by M/s Punjab Stainless Steel Industries, Kundli (hereinafter referred to as the applicant) against the Order-in-Appeal No.492/KKG/RTK/07 dated 12/12/2007 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon whereby appeal of the revenue was allowed and the order of the Assistant Commissioner allowing the rebate of duty to the applicant was set aside.

2. The brief facts leading to the filing of the present revision application are that the applicant purchased CR/HR coils on payment of central excise duty and availed CENVAT credit against payment of duty. Further, the applicant got CR/HR coils cut from job workers on job work basis and the same were exported to China on payment of excise duty from CENVAT credit availed on purchase of CR/HR coils. The applicant filed rebate claims against export of aforesaid goods which was allowed by the jurisdictional Assistant Commissioner. However, after the order-in-original was reviewed by the Commissioner, an appeal was filed by the jurisdictional Assistant Commissioner against the order-in-original on the ground that cutting of HR/CR coils does not amount to manufacture and, therefore, the applicant could not avail CENVAT credit on HR/CR coils and was not required to pay duty of excise on the cut CR/HR coils. The appeal of the Department was allowed by the Commissioner (Appeals) vide his above stated order-in-appeal and the applicant filed the present revision application against the aforesaid order-in-appeal which was disposed of earlier by the Joint Secretary (RA) of the central government vide his order no. 208/11-CX dated 03/03/2011 by rejecting the applicant's revision application. However, the order of the Joint Secretary was challenged

before the Punjab and Haryana High Court on the ground that the revision application could not be decided by the Joint Secretary as his rank is equal to the Commissioner (Appeals) only. Allowing the Writ Petition of the applicant on the above ground, the High Court set aside the above referred order of the JS (RA) vide its Order dated 04/08/2016. However, liberty was given to the Government to consider the revision application afresh. Accordingly, the revision application was taken up for decision in compliance of the Hon'ble High Court's order.

3. A personal hearing was fixed on 20/12/2017, 08/01/2018 and on 30/01/2018 and the hearing was availed by the applicant on 30/01/2018 through its advocate, Ms. Shohini Bhattacharya, who submitted written submissions in addition to the grounds already mentioned in the revision application.

4. The revision application is filed mainly on the grounds that cutting of CR/HR coils amounts to manufacturing and even if it does not amount to manufacture then also rebate of duty on the goods exported by them is admissible under Rule 18 of Central Excise Rules, 2002 and Notification no. 19/224-CE dated 06/09/2004. Further it is also pleaded in their additional submissions furnished during personal hearing on 30/01/2018 that no notice for erroneous refund has been issued to them under Section 11A and, therefore, the amount of rebate already granted to them cannot be recovered as per law.

5. However, on examination of the revision application it is found at the outset that it has been filed with the Government on 14/08/2004 only even when the Order-in-Appeal of the Commissioner (Appeals) was received by the applicant on 22/12/2007 itself as per the details given at Sr. No. 4 of the EA-8 form of the revision application. Whereas as per Sub-

Section 2 of Section 35EE of the Central Excise Act, 1944, the revision application was required to be filed within 3 months from the date of the communication of the Commissioner (Appeals)'s order to the applicant i.e. by 22/03/2008 in this case. Thus revision application has been filed after delay of more than 4 months on 14/08/2008. The Central Government has been empowered under Proviso to Sub Section 2 of Section 35EE of the Central Excise Act, 1944 to allow the application to be presented within 3 months if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of 3 months. But in this case no request has been made for condonation of delay in filing the revision application, not to speak about showing any sufficient cause which might have prevented the applicant from filing the application in time. In Para 6 of the revision application, it has been merely mentioned in a vague manner that the applicant had filed appeal before the tribunal, but on 23/07/2008 at the hearing it was held that the appeal was wrongly filed before CESTAT. It is further stated the appeal was dismissed by the tribunal as withdrawn with permission to file revision application before the Joint Secretary to the Government of India. However, the copy of the CESTAT's order is not found enclosed with the revision application and in the said Para of the revision application it is stated that the order of the Hon'ble Tribunal is awaited. But, the copy of the Tribunal's order is not furnished subsequently also till now and even during the hearing held on 30/01/2018. The copy of the appeal filed before the CESTAT against the Commissioner (Appeals)'s order is also not produced either with the revision application or even subsequently. Consequently the authenticity of the applicant's version in aforesaid Para 6 that they had filed an appeal

wrongly before CESTAT and it has been dismissed by the Tribunal as withdrawn due to lack of jurisdiction is under cloud.

6. Thus the delay of more than 4 months in filing the present revision application before the Government, in addition to the normal period of 3 months as discussed above, remains unexplained and the same cannot be condoned by the Government under the aforesaid provision contained in sub Section 2 of Section 35EE irrespective of filing or non-filing of the application for condonation of delay.

7. In light of above discussion, the revision application filed by the applicant is patently time-barred and accordingly the revision application is rejected.

*R. P. Sharma*  
1-3-18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s Punjab Stainless Steel Industries,  
Piyau Maniyari Narela Road, Kundli,  
Haryana

G.O.I. Order No. 109 /18-Cx dated 1-3-2018

Copy to:-

1. Commissioner of Central Excise & Service tax, II Floor, Pacific City Centre, Near Jaat Bhawan, Rohtak.
2. Commissioner (Appeals), Central Excise, Plot No. 36 & 37, Sector 32, Gurugram.
3. PA to AS(Revision Application)
- ✓ 4. Guard File
5. Spare Copy

*Nirmala Devi*  
1-3-2018

NIRMALA DEVI  
(Section officer)  
(Revision Application unit)