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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F NO. 195/528/13-RA / 817

Date of Issue: 18.01.2018

ORDER NO. 01/2018-CX (WZ) /ASRA/MUMBAI DATED 17.01.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Unichem Laboratories Ltd., Unichem Bhavan,  
Prabhat Estate, S.V.Road, Jogeshwari (West), Mumbai.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US / 178/ RGD /2012 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), 3<sup>rd</sup> floor, GST Bhavan, BKC, Bandra (East) Mumbai-400051.



**ORDER**

This revision application is filed by M/s. Unichem Laboratories Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/178/RGD/2012 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II with respect to the Order-in-Original No. 623/11-12/DC (Rebate)/Raigad dated 22.07.2011 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants had filed the following two rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 dtd.06.09.2004. The rebate claims totally amounting to Rs.96,372/-were sanctioned by the Deputy Commissioner of Central Excise (Rebate) Raigad, vide Order-In-Original No.623/11-12 dated 22.07.2011. The said Order in Original was reviewed by Commissioner of Central Excise Raigad to the extent of Rs. 55,992/- and appeal had been filed against the same before Commissioner (Appeals) on the following grounds:-

- The rebate sanctioning authority mentioned by the exporter in the ARE1 No. 27 dated 16.07.2010 is "Assistant Commissioner of Central Excise, Division, 4th Floor, Plot No.3 sector 17, trifled Tower, Khandeshwar, NaviMumbai."The rebate sanctioning authority has no juriddtion to sanction the rebate claim as it is not addressed to the Maritime Commissioner of Central Excise, Raigad, hence the rebate amounting to Rs.55,992/- for the rebate claim No. 19593 dated 14,12,2010 sanctioned by Deputy Commissioner, Maritime Commissionerate, Raigad is not legal and correct; and
- Certificate at Sr.No.3(c) of ARE-1 No.27 dtd.16.07.2010 is given as availing facility under Notification No.43/2001-CE (NT) dated 26.6.2001 issued under Rule 19 of Central Excise (No.2) Rules, 2001 and the same are required to be exported under Bond.

In view of the above, the Order in Original No.623/11-12 dated 22.07.2011 sanctioning rebate claim to the extent of Rs.55,992/- is not legal and proper.



*[Handwritten signature]*

3. The Commissioner (Appeals) vide Order in Appeal No. US/178/RGD/2012 dated 15.03.2012 set aside Order in Original No.623/11-12 dated 22.07.2011 and allowed the Revenue's Appeal with the following observation:

*The ARE-1 is a statutory form prescribed under Notification No.19/2004 dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002. The declarations given in the ARE-1's are required to be filled in so as to ascertain whether specified Notifications have been availed by the exporter or not. This is a statutory requirement which have not been complied by the appellants. I find that ARE-1 is an assessment document. After self-assessing the said document, the respondents presented the same to the proper officer. Once the said document is assessed by the respondents, it is not open for them to re-assess it. Board has also clarified under Circular No.510/06/2000-CX dated 3.2.2000 that any scrutiny of the correctness of the assessment shall be done by the jurisdictional Assistant/Deputy Commissioner only. Accordingly the impugned order has to be set aside to the extent of Rs.55992/-.*

On the point of wrong mention of rebate sanctioning authority, Commissioner (Appeals) has held that it is only procedural aspect and rebate cannot be denied on this ground.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the grounds stated in their Revision application.

5. A Personal hearing was held in this case on 28.12.2017 and Shri Ganesh Kadam, Assistant Manager of the applicant appeared for hearing and reiterated the submission filed through Revisionary Authority. It was pleaded that there is no doubt about the genuineness of exports; BRC have also been produced; a substantive benefit of rebate cannot be denied for technical infraction. Hence In view of above, it was prayed that the Order-in-Appeal be set aside and Revision Application be allowed.



*Signature*

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government finds that the applicant filed this Revision Application after expiry of more than eight months from the date of receipt of impugned Order in Appeal. The time limit for filing revision application is stipulated under Section 35EE(2) of Central Excise Act, 1944 and the provision of section 35 EE of Central Excise Act, 1944 for ready reference are extracted as under :-

Revision by Central Government —

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation.—For the purposes of this sub-section, “order passed under section 35A” includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(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.



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The sub-section (2) provides for time of 3 months for filing revision application. The delay upto 3 months can be condoned by Central Government on justified reasons. It is mandatory to follow the time limit as prescribed under section 35EE(2). So any application filed beyond the prescribed time limit being time barred cannot be entertained at all and is liable to be rejected as time barred.

8. In the instant case the applicant received the copy of Order in Appeal on 15.03.2012, however, the applicant filed the Revision Application before Government of India on 12.12.2012. The said application is filed after expiry of 3 months initial time period and also even after the lapse of condonable period of 3 months. The only reason given by the applicant for delay in filing the Revision Application is "due to change in staff who was handling this matter". This ground, by no stretch of imagination can be construed to be a compelling reason for not filing the appeal in time. It is settled law that each day's delay, after the expiry of limitation period, is required to be explained. There is nothing on record, before Government, to justify such an action on the part of the applicant. Thus the Revision Application filed after stipulated time period is clearly time barred and is not maintainable at all.

9. Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag and others Vs Mst. Katji and others reported in 1987 (28)ELT(SC) has held that when delay is within condonable limit laid down by the statute the discretion vested in a authority to condon such delay is to be exercised following guidelines laid down in the said judgement. But when there is no such condonable limit and claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10. Government also observed that the reasons given by the applicant for the delay in filing the application are not sufficient and justifiable and hence the



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revision application filed after stipulated time limit is liable to be rejected as time barred.

11. Accordingly, the revision application is dismissed as time barred.

12. So ordered.

*Ashok Kumar Mehta*  
17.02.2018

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No <sup>01</sup>/2018-CX (WZ) /ASRA/Mumbai DATED 17.01.2018

To,  
M/s. Unichem Laboratories Ltd.  
Unichem Bhavan, Prabhat Estate,  
S.V. Road, Jogeshwari (West),  
Mumbai 400 102.

True Copy Attested

*Sankarsan Munda*  
17/01/18

SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup> Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

