

REGISTERED SPEED POST



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
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F.No. 195/373/14-RA/2809

Date of Issue: 09.04.2021

ORDER NO. 177/2021-CX (WZ)/ASRA/MUMBAI DATED 31.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-WXCUS-002-APP-120/14-15 dated 14.08.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

Applicant : M/s Intas Pharmaceuticals Limited.
2nd Floor, Chinubai Centre, Off,
Nehru Bridge, Ashram Road,
Ahmedabad-380 009

Respondent : The Commissioner, Central Excise, Ahmedabad-II.

ORDER

This Revision application is filed by M/s. Intas Pharmaceuticals Limited, Ahmedabad (hereinafter referred to as 'applicant') against the Order in Appeal No. AHM-EXCUS-002-APP-120/14-15 dated 14.08.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The brief facts of the case are that the applicant had filed rebate claims under Notification No. 21/2004-CE (NT) dated 06.09.2004 for claiming rebate of duty on inputs used for export of goods. These claims were rejected by Assistant Commissioner, Central Excise Division -IV, Ahmedabad-II vide Order-in-Original No. 222-240/REBATE/2010 dated 26.02.2010. The applicant preferred an appeal before Commissioner (Appeals), Central Excise, Ahmedabad who allowed the appeal vide Order-in-Appeal No.168/2010(Ahd-II)CE/CMC/Commr(A)Ahd dated 24.06.2010. Resultantly, Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II sanctioned rebate claims to the tune of Rs. 1,29,76,293/- in favour of the appellants. Thereafter vide letter dated 28.11.2013, the applicant sought interest to the tune of Rs. 3,01,818/- on delayed sanction of claims. However the same was not considered and the same was informed to the applicant vide letter dated 31.12.2013 by Assistant Commissioner, Central Excise Division -IV, Ahmedabad-II.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals-I) Central Excise, Ahmedabad. Commissioner (Appeal) while rejecting the appeal vide impugned Order observed as under:-

....."a total amount of Rs. 1,29,76,293/- was sanctioned in favour of the appellants vide Orders-in-Original cited above (para 5 of the impugned Order). None of the above orders speak of any interest payable to the appellants on account of delayed sanction of claims. The appellants calculated interest payable to them and vide their letter dated 28.11.2013 sought interest to the tune of Rs. 3,01,818/- . This has been apparently denied by the rebate sanctioning authority and intimated to the appellants vide office letter dated 31.12.2013.

.....

.....

....."In the instant case, the seven above mentioned Orders-in-Original vide which rebate was sanctioned to the appellants without payment of interest on delayed sanction of rebate, I find have been issued during the period August, 2010 to October, 2010. I am inclined to come to

conclusion that if the appellant felt aggrieved with these orders which did not provide for payment of interest, the appellants were to make representation for the same before the jurisdictional Central Excise officers citing provisions of section 11 BB of the Act and CBEC Circular No. 670/61/2002-CX dated 01.10.2002. In case any appeal was to be preferred before Commissioner (Appeals) on the issue of nonpayment of interest, the same was to be presented in terms of section 35 of the Act. I find that no such appeal was ever filed before Commissioner (Appeals). Instead, I find that the appellants raised the issue of interest on delayed refunds vide a letter dated 28.11.2013 addressed to the Deputy Commissioner, Central Excise Division-IV, Ahmedabad-II who vide his letter dated 31.12.2013 informed them that the issue of rebate claims has already been disposed of as per the direction of Commissioner (Appeals) with the direction, "Any person deeming himself aggrieved by this order may appeal against this order in Form-EA-1 to Commissioner (Appeals), Central Excise, Central Excise Bhawan, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication (i.e. August/October 2010). The appeal should bear a court fee stamp of Rs. 2 only". I find that this direction is an integral part of the preamble to all of the above seven Orders-in-Original vide which rebate was sanctioned to the appellants".

" In view of facts and discussions mentioned in the preceding paras, I hold that the letter dated 31.12.2013 of Deputy Commissioner, Central Excise Division-IV, Ahmedabad-II cannot be treated as an order by lower adjudicating authority which can be challenged before Commissioner (Appeals). If any appeal was to be presented by the appellants before Commissioner (Appeals), the same was to be presented within sixty days of the communication of aforementioned seven Orders-in-Original in terms of section 35 of Central Excise Act, 1944. The filing of present appeal which has been received on 31.03.2014, I find to be time barred in terms of section 35 of Central Excise Act, 1944 and I reject them accordingly.

4. Being aggrieved by the impugned Order in appeal, the applicant filed present Revision Application mainly on the following grounds:

4.1 1) Section 11BB of Central Excise Act, 1944:

They would first like to state that just as the Central Government is automatically entitled to the Interest on any delayed payment of Central Excise Duty by the assessee, similarly the assessee is also automatically entitled to the Interest on any delayed claim of rebate / refund of Central Excise Duty. This right of the assessee is enshrined in the Section 11BB of the Central Excise Act, 1944. (The applicant has reproduced Section 11BB).

2) CBEC Circular No. 670/61/2012-CX, dtd. 01.10.2002 :

Although the language of the said Circular & the directions given thereby to the officers of CBEC are very clear & self-explanatory, there are 2 points (in

para 2 of the circular) which deserve a special mention here as they carry the gist of the said circular. The said points are as mentioned below:

In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest.

After this clear & unambiguous instruction by the Board, nothing more remains to be clarified.

4.2 Interest u/s 11BB of CEA, 1944, on Rebate / Refund to be calculated from the Date of expiry of 3 months from the Date of filing the Application for Rebate/Refund and not on the expiry of said period from the Date of any subsequent order of the Appellate Authority/CESTAT/any Court:

They have, in their application, calculated the interest from the date of expiry of 3 months from the date of filing the application for rebate till the date of OIOs sanctioning the said rebate. Just to clarify any doubts that may arise regarding the date from which the interest is to be calculated (particularly, in view of the Explanation to Section 11BB) it would be apt to note the judgment of Hon'ble Supreme Court in the case of M/s. Ranbaxy Laboratories Ltd. v. UOI reported on [2011-TIOL-I05-S.C.-CS = 2011 (273) E.L.T. 3 (SC)=2012(27)S.T.R. 193(S.C.)].

4.3 It may be noted that Hon'ble Commissioner (Appeals - I), Ahmedabad, in his aforesaid OIA, nowhere disagrees with / disputes the grounds (viz. provision of Section 11 BB of CEA, 1944, and instructions contained in the CBEC Circular No. 670/61/2012-CX, dtd. 01.10.2002) on which the appeal was filed with his office. The appeal is solely rejected on the ground that it was time barred.

4.4 Seven OIOs sanctioning the rebate claim and the Reply (vide F. No. V/30/18-73 /REF/IV /2013/6737 , dtd. 31.12.2013) of the Respondents:

As rightly observed by the Commissioner (Appeals - I), Ahmedabad, the aforesaid seven OIOs are silent on the aspect of payment of interest. In fact, in view of such crystal-clear language of Section 11 BB and the instruction in the Board Circular, the interest too should have been sanctioned alongwith the rebate in the said OIOs. With regards to the reply of the Respondents dtd. 31.12.2013, its worth observing that the said reply has been drafted very meticulously. So much so that although the said reply of respondents was in response to the application by the Applicants (vide their letter dtd. 28.11.2013) for grant of interest, the said reply does not mention the word "interest" anywhere. It appears that the respondents are so much averse to the payment of interest on delayed rebate claims that they are treating even the word "interest" as a pariah, so as to not to quote it anywhere in their reply.

Moreover, the seven OIOs & the said reply of the respondent do not mention anywhere the grounds for not sanctioning the said interest which, in terms of Board's Circular, accrues automatically to the assessee (even though the Applicants have cited the provision of Section 11BB & CBEC Circular in their application letter dtd. 28.11.2013, filed with the respondents). And on the contrary, the Applicants are being, indirectly, told that they have the option to file an appeal with the Commissioner (Appeals) against the said OIOs.

Such apathy on the part of respondents clearly shows that the natural right of the appellant is being withheld by the respondents for no reason and in deliberate ignorance of law, thus creating litigation where there is scope for none.

4.5 In fact, following the order of the Honourable High Court of Gujarat in case of M/s E.I. Dupont India Pvt. Ltd. [2013-TIOL-1172-HC-AHM-CX], CBEC has issued Instructions (vide F.No. 201/01/2014-CX.6 dtd. 26.06.2014 to the adjudicating authorities, regarding the need to follow judicial discipline in adjudication proceedings. Although this case of M/s E.I Dupont was different than ours, the treatment meted out by the Adjudicating Authorities to the Assessee was the same i.e. despite having a binding circular and a binding precedent judgment on the subject, the Adjudicating Authority chose to ignore them and indulge in unnecessary litigation. Taking a serious view of this, the Honourable High Court of Gujarat has observed that willful disregard of law laid down by High Court, prima facie, amounts to Civil contempt as defined in Section 2(2b) of Contempt of Courts Act, 1971 and that binding decision of higher appellate authorities / Courts could not be permitted to be ignored under the guise of interests of revenue.

4.6 They wish to submit that in their case too, a binding Circular No. 670/61/2012-CX, dtd. 01.10.2002, already exists and yet the Ld. Jurisdictional Dy. Commissioner of Central Excise deliberately ignored it (despite it being brought to his notice) and after going through the aforesaid CBEC Instructions, it seems that he has further chosen to ignore the observations of Hon'ble High Court of Gujarat and the consequent CBEC Instructions itself.

5. A Personal hearing in this case was held on 27.01.2021 through video conferencing and Shri Rajesh Ostwal, Counsel of the applicant appeared on line and submitted that adjudication order has not decided on interest. Unless an Order was passed, they could not have gone in appeal. He further submitted that provisions of interest are attracted automatically and requested for ordering payment of interest.

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

7. Government observes that in the instant case, the issue involved is whether the applicant's appeal filed against Deputy Commissioner, Central Excise Division-

IV, Ahmedabad-II 's letter dated 31.12.2013 was rightly rejected (on the grounds mentioned in para 3 supra) by the Commissioner (Appeals-I), Central Excise, Ahmedabad, vide his impugned Order or not.

8. Government observes that the applicant on being aggrieved by the rejection of rebate claims had filed appeal before Commissioner (Appeals-I), Central Excise, Ahmedabad. The said Commissioner (Appeals) vide Order in Appeal No. 168/2010 (Ahd-II)CE/CMC/Commr(A)/Ahd dated 24.06.2010 allowed the appeals of the applicant.

9. Pursuant to this Order in Appeal the rebate sanctioning authority sanctioned the rebate claims of the applicant vide following Orders in Original.

Sl. No.	Order in Original & Date	Amount of Rebate claim sanctioned (Rs.)
1.	2541 to 2545/ REBATE / 2010, dtd. 04.10.2010	28,59,634/-
2.	1704 to 1716/ REBATE / 2010, dtd. 05.08.2010	16,07,162/-
3.	2022 to 2031/ REBATE / 2010, dtd. 27.08.2010	14,66,186/-
4.	2032 to 2041/ REBATE / 2010, dtd. 27.08.2010	24,52,897/-
5.	2042 to 2047/ REBATE / 2010, dtd. 27.08.2010	1,54,039/-
6.	1937 to 1949/ REBATE / 2010, dtd. 20.08.2010	31,81,406/-
7.	2522 to 2523/ REBATE / 2010, dtd. 30.09.2010	12,54,969/-
	TOTAL	1,29,76,293/-

However, the rebate sanctioning authority, vide aforementioned Orders in Original sanctioned only the rebate amount and did not grant interest on delayed sanctioning of rebate claims. Therefore, the applicant vide letter dated 28.11.2013 applied to the rebate sanctioning authority viz. Deputy Commissioner of Central Excise , Division -IV, Ahmedabad-II seeking interest of Rs.3,01,818/- on delayed sanction of aforesaid rebate claims quoting therein the provisions of Section 11BB of Central Excise Act, 1944 and CBEC Circular No.670/61/2012-CX dtd. 01.10.2012 which mandated and required the payment of interest to the assessee on any delayed sanctioning of the rebate claim.

10. The Deputy Commissioner of Central Excise, Division -IV, Ahmedabad-II vide letter dated 31.12.2013 informed the applicant as under :-

The issue has been examined and found that on the demerit of these claims it was initially rejected by this office on 26.02.2010/22.03.2010, however, the same had already been disposed of on 04.10.2010 and 05/06.08.2010 by then Assistant Commissioner, of this division office as per direction of Commissioner (Appeal) with the restrictions of the demerits available in the

OIO/OIA with the direction, "Any person deeming himself aggrieved by this order may appeal against this order in Form-EA-1 to Commissioner (Appeals), Central Excise, Central Excise Bhavan, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication (i.e. August/October 2010). The appeal should a court fee stamp of Rs. 2/- only."

11. Being aggrieved by the aforesaid letter the applicant filed an appeal with the Commissioner (Appeals) who vide impugned Order dated 14.08.2014 rejected the appeal (para 3 supra). Thereafter the applicant has filed the present Revision Application on the grounds mentioned at para 4 supra.

12. Government notes that the applicant has relied upon the CBEC Circular No. 670/61/2012-CX, dtd. 01.10.2002 and has reproduced 2 points (in para 2 of the circular) which according to them deserve a special mention as they carry the gist of the said circular (Para 4.1 supra) . The said points are as mentioned below:

In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest.

After reproducing the gist of the Circular in grounds of appeal, the applicant submitted that **"after this clear & unambiguous instruction by the Board, nothing more remains to be clarified"**.

13. From the above, Government notes that the applicant was very much aware of the fact that C.B.E. & C. Circular No. 670/61/2002-CX, dated 1-10-2002 clearly provided that the provision of Section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned from beyond three months and jurisdictional officers are not required or look for instruction from higher appellate authorities. Therefore, when the rebate sanctioning authority vide Orders in Original (at para 9 supra) sanctioned only the rebate amounts and did not allow/ grant any interest on delayed sanctioning of rebate claims, the remedy available with the applicant was to file appeal against these Orders in original before Commissioner (Appeals), under sub-section (1) of Section 35 of the Central Excise Act, 1944. Instead, the applicant after lapse of more than three years preferred to apply vide letter dated 28.11.2013 seeking interest on the said delayed sanction of rebate claims. Government from copy of each of the Order in Original mentioned at

para 9 supra, observes that preamble of the all these orders-in-original clearly mentioned that **'any person deeming himself aggrieved by this order may appeal against this order in Form EA-1 to Commissioner (Appeals) Central Excise, Central Excise Bhavan, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication'**.

14. A fact which cannot be denied by the applicants is that Orders in Original issued in August-October, 2010 were not challenged by them until the same were sought to be challenged by filing appeal (against Deputy Commissioner of Central Excise, Division -IV, Ahmedabad-II's letter dated 31.12.2013) in the year 2014. The legislative intent is abundantly clear in empowering quasi-judicial authorities to provide for an appellate mechanism in the Central Excise Act, 1944/Customs Act, 1962. When the Legislature has specifically provided an appellate structure, the intent not to avail of the normal appellate remedy by the assessee or by revenue when aggrieved, cannot be attempted to be reopened after lapse of appealable period including condonable period provided in the statute. The law does not come to the aid of the indolent, tardy litigant. Therefore, allowing appeal against letter dated 31.12.2013 would be without authority of law as it would be contrary to the statutory period of limitation prescribed for filing an appeal under Section 35 of the Central Excise Act, 1944 against such Orders in Original, which is 60 days. If such a practice is allowed, then it would amount to a back door entry, to circumvent the provisions of Section 35 of the Central Excise Act, 1944 which is against the settled law.

15. As regards the reliance placed by the applicant on M/s E.I. Dupont India Pvt. Ltd. [2013-TIOL-1172-HC-AHM-CX=2014 (305) E.L.T. 282 (Guj.)], the issue involved was willful disregard of law laid down by High Court, which prima facie, amounted to Civil contempt as defined in Section 2(2b) of Contempt of Courts Act, 1971 and binding decision of higher appellate authorities/Courts not permitted to be ignored under the guise of interests of revenue. It was also observed in the said case that in adjudication precedent / binding decisions of higher appellate authorities/Courts on identical questions of law repeatedly ignored by lower authorities despite clear and specific and authoritative pronouncements to this effect by higher authorities/Courts, therefore C.B.E. & C. was directed to issue a detailed circular to all adjudicating authorities as to binding effect of orders passed by higher appellate authorities/Courts. In the present case the issue is non-payment of interest by the rebate sanctioning authority against which remedy of

appeal was very much available to the applicant which was not availed by them. Hence, reliance placed on *E.I. Dupont India* is misplaced as the factual context in the two cases is substantially different.

16. In view of the above discussion and findings, the Government does not find any reason to interfere with or modify the Order-in-Appeal No. AHM-WXCUS-002-APP-120/14-15 dated 14.08.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad and upholds the same.

17. The revision application is rejected being devoid of merits.

Shrawan
31/03/21
(SHRAWAN KUMAR)

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

ORDER No. 177/2021-CX (WZ) /ASRA/Mumbai DATED 31.03.2021

To,
M/s Intas Pharmaceuticals Limited.
2nd Floor, Chinubai Centre,
Off, Nehru Bridge, Ashram Road,
Ahmedabad-380 009

Copy to :

1. The Commissioner of GST & Central Excise, Ahmedabad North, 1st Floor, Customs House, Near All India radio, Navrangpura, Ahmedabad - 380009.
2. The Commissioner of CGST (Appeals), Ahmedabad, Central Excise Bhavan, Ambawadi, Ahmedabad - 380015.
3. The Assistant Commissioner, Division-II: 3rd Floor, Sahajanand Arcade, 132 Ft. Road, Helmet Circle, Memnagar, Ahmedabad-380009.
- 4 Sr. P.S. to AS (RA), Mumbai.
- 5 Guard file.
- 6 Spare Copy.