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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, Cuffe Parade,  
Mumbai- 400 005

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F. NO.195/167-172/WZ/2018-RA /2021 Date of Issue: 05.04.2023

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ORDER NO. 205-210 /2023-CX (WZ) /ASRA/MUMBAI DATED 31.03.2023  
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.

Applicant : M/s Unidrug Innovative Pharma Technologies Ltd.,  
Plot No. 84A-86B, Sector E, Industrial Area,  
Sanwer Road, Indore.

Respondent : The Commissioner, CGST, Customs and Central Excise,  
Indore.

Subject : Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
Nos. IND-EXCUS-000-APP-108-113-18-19 dated  
25.05.2018 passed by the Commissioner (Appeals),  
Customs, CGST & Central Excise, Indore.

**ORDER**

The subject Revision Applications have been filed by M/s Unidrug Innovative Pharma Technologies Ltd., Plot No. 84A-86B, Sector E, Industrial Area, Sanwer Road, Indore (hereinafter referred to as the 'Applicant') against the Orders-in-Appeal Nos. IND-EXCUS-000-APP-108-113-18-19 dated 25.05.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore.

2. The facts of the case briefly stated are that the Applicant is engaged in the manufacture and export of Organic Chemicals falling under Chapter 29 of the Central Excise Tariff Act, 1975. The Applicant submitted 06 rebate claims of Rs. 4,30,017/- for the duty paid on goods exported during the month of September 2016 to January 2017. During scrutiny of the rebate claims it was noticed that the FOB value of the goods appearing in the Shipping Bills was less than the value on the ARE-1's, on which duty was paid, the Original Authority vide Orders-in-Original Nos 192 to 197/2017-18/AC/D-II/R dated 03.11.2017 sanctioned an amount of Rs. 3,87,973/- in cash and the excess duty paid over FOB value amounting to Rs. 42,044/- was allowed by way of re-credit to their Cenvat account.

3. Aggrieved by the Orders-in-Original, the Applicant preferred appeals before the Appellate Authority i.e Commissioner(Appeals) CGST & Central Excise, Indore. The appeals were filed on 12.03.2018 against the impugned Orders-in-Original dated 03.11.2017, which were received by the Applicant on 12.11.2017. The Appellate Authority, vide Orders-in-Appeal No. IND-EXCUS-000-APP-108-113-18-19 dated 25.05.2018, refrained from going into the merits of the case and rejected the appeals as time barred as the appeals were filed after 119 days, which was not only was beyond the period prescribed for filing appeal under Section 35 of the Central Excise Act, 1944 but was also beyond the period prescribed for condonation of delay by the Commissioner (Appeals).

4. Aggrieved, the Applicant has filed the present Revision Applications against the Orders-in-Appeal dated 25.05.2018 on the following grounds:-

- 4.1. That the AA was technically correct but a huge injustice is done to the Applicant by not deciding the case on merits;
- 4.2 That the action of the rebate sanctioning authority to allow the credit by way of re-credit is ipso facto against the provisions of GST law as it is clearly provided under Section 142 of the CGST Act, 2017 that any amount due to the assessee after the introduction of the GST Act, should be paid in cash;
- 4.3. That the Applicant approached to the rebate sanctioning authority for rectification of order but he took time to take a decision and after the expiry of the appeal period they were asked to file an appeal by which the time had lapsed;
- 4.4. That there was no preamble attached to the order-in-original and the Applicant was under the impression that there would be some provision in the GST law for availment of the legally sanctioned refund;
- 4.5. That any claim for refund of duty/tax/cenvat credit/interest is found to be admissible on or after appointed day shall be paid in cash and inspite of this clear cut provision in the GST law the rebate sanctioning authority ordered rebate by way of re-credit to cenvat account which is a gross violation of the Act

In light of the above submissions, the Applicant prayed that the impugned order be modified to the extent of sanctioning Rs. 42,044/- also in cash alongwith interest.

5. Personal hearing in the matter was scheduled for 14.10.2022 or 04.11.2022, 30.11.2022, 14.12.2022 or 11.01.2023. Shri Harkesh Meena, Assistant Commissioner appeared online for the hearing on 30.11.2022 on behalf of the Respondent. Shri Bharat Jain appeared online for the hearing on 11.01.2023, on behalf of the Applicant and submitted that the Commissioner (Appeals) has rejected his appeal for delay of 10 days and requested to condone the delay. He requested to allow their rebate claim and if that is not possible then duty paid be returned to them.

6. Government has carefully gone through the relevant case records available in the case file, the written and oral submissions and also perused the impugned Orders-in-Original and the Orders-in-Appeal.

7. Government finds that the Appellate Authority had rejected the appeals filed by the Applicant, without going into the merits of the case, as the appeal was filed by the Applicant after 119 days from the receipt of the Orders-in-Original. Thus there was a delay in filing the said appeals and that such delay was beyond the period that could be condoned by the Appellate Authority. Government observes that it is not in dispute that appeals were filed on 12.03.2018. The impugned orders were received by the Applicant on 12.11.2017 and the period of sixty days ends on 11.01.2018 and the further condonable period of thirty days ends on 10.02.2018 and thus there was a delay of 29 days in filing the appeals before Commissioner (Appeals), which was beyond the period of sixty days and a further thirty days time limit prescribed by Section 35 of the Central Excise Act, 1944. The crux of the issue is whether Commissioner (Appeals) is empowered to condone the above delay. Government notes that the issue is no more *res-integra* and has been set to rest by the Hon'ble Supreme Court in the case of Singh Enterprises vs Commissioner of Central Excise, Jamshedpur [2008 (221)ELT 163 (S.C.)]. Relevant portion of the order is reproduced below :-

*"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35*

*makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

8. The above judgment of the Apex Court leaves no doubt that in the present case, the Commissioner (Appeal) did not have the power to condone the quantum of delay on the part of the Applicant in filing the rebate claims. Government finds that the decision of the Commissioner (Appeals) to reject the appeals on the grounds of them being time barred is proper and legal. Government refrains from going into the merits of the case, as the appeals by the Applicant before the Appellate Authority have been found to be time barred.

9. In view of the findings recorded above, Government finds no reason to annul or modify the Orders-in-Appeal Nos. IND-EXCUS-000-APP-108-113-18-19 dated 25.05.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore.

11. The Revision Applications are dismissed.

  
(SHRAWAN KUMAR)

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

ORDER No. 205-910 /2023-CX (WZ) /ASRA/Mumbai dated 31.03.2023

To,  
M/s Unidrug Innovative Pharma Technologies Ltd.,  
Plot No. 84A-86B, Sector E, Industrial Area,  
Sanwer Road, Indore.

Copy to:

1. The Pr. Commissioner of CGST, Customs and Central Excise, Indore, Manik Bagh Palace, Post Box. No 10, Indore (MP) 452 001.
2. The Commissioner (Appeals), CGST and Central Excise, Indore, Manik Bagh Palace, Post Box. No 10, Indore (MP) 452 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.