

**REGISTERED
SPEED POST**



**F.NO. 195/587-588/11-RA
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. 8.3.13

**ORDER NO. 230-231/2013-CX DATED 7.3.2013 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D P SINGH, JOINT 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. 32/2005(P) dated 10.5.2005 and 23/2005(P)
dated 15.3.2005 passed by the Commissioner of
Central Excise (Appeals), Chennai**

Applicant : M/s Shasun Pharmaceuticals Ltd, Cuddalore

Respondent : Commissioner of Central Excise, Pondicherry

ORDER

These revision applications are filed by the applicant M/s. Shasun Pharmaceuticals Ltd., (formerly known as M/s. Shasun Chemicals and Drugs Limited) Chennai against the order-in-appeal No. 32/2005(P) dated 10.5.2005 and 23/2005 dated 15.3.2005 passed by the Commissioner of Central Excise (Appeals) Chennai with respect to order-in-original No.4/04 dated 31.5.2004 and No.3/04 dated 27.2.2004 respectively passed by Additional Commissioner of Central Excise, Pondicherry and Deputy Commissioner of Central Excise, Cuddalore Division, Pondicherry Commissionerate. The details of both revision applications as are under :

S. No.	Revision Application Nos.	Against Order-in-Appeal No. & Date
1.	F. No. 195/587/11 - R.A.	32/2005(P) dated 10.5.2005
2.	F. No. 195/588/11 - R.A.	23/2005(P) dated 15.3.2005

2. Brief facts of the case are that the applicants had exported 750 kgs of Gabapentine under cover of AR4 No. 171/2000-01 dated 29.03.2001 with invoice No. EB 1220 dated 20.03.2001 and the same has been exported under claim for Rebate of duty under Rule 18 of the Central Excise Rules, 2002 after executing an undertaking vide Rule 19 of the Central Excise Rules, 2002. The above consignment has been assigned with Shipping Bill No. 2320913 dated 30.03.2001. Of the above 750 kgs. of Gabapentine 500 kgs. was returned by the buyer to the assessee and the same was reimported vide Bill of Entry No. 176/04.01.2002 without payment of duty vide notification N o. 158/95-CUS dated 14.11.1995. The above said returned material of 500 kgs. Gabapentine was reprocessed and cleared for export under cover of ARE 1 No. 1/2002-2003

dated 06.04.2002 with export invoice No. E001 dated 06.04.2002 on the strength of undertaking furnished by the assessee. The consignment of 500 kgs. of Gabapentine cleared for export loaded in a mini lorry reportedly met with an accident on 08.04.2002 near Killianur between Pondicherry and Tinidvanam and the entire 500 kgs. of Gabapentine was reported to have been destroyed by fire caused by an accident. The assessee have also claimed/obtained compensation of Rs. 51,20,500/- from M/s. Reliance General Insurance Company towards the cost of 500 kgs. of Gabapentine. The assessee undertakes to pay the duty amount on the goods in the event of failure to export the excisable goods vide undertaking dated 31.07.2001 executed for the purpose of export. Accordingly, duty of Rs. 8,19,280/- at the rate of 16% Adv. on Rs. 51,20,500/- being the value of 500 kgs. of Gabapentine cleared for export but not exported has been demanded vide CSCN No. 50/2002-2003 in O. C. No. 127/2003 dated 06.03.2003 by the Superintendent, Cuddalore II range. After due process of law, the adjudicating authority vide impugned order-in-original dated 31.05.2004 confirmed the duty demand of Rs. 8,19,280/- with interest calculated on the value of 500 kgs. of Gabapentine cleared for export but not exported and subsequently destroyed in fire accident.

2.1. The applicants has also exported 500 kgs. of Ranitidine HCL valued at Rs. 5,03,469/- on payment of duty of Rs. 80,555/- under claim for rebate of duty under ARE-1 No. 6/2002-2003 dated 10.04.2002 and Shipping Bill No. 03645 dated 11.04.2002. The assesses were sanctioned rebate of Rs. 80,555/- being the Central Excise duty paid on the 500 kgs. of ranitidine HCL exported by the Maritime Commissioner of Central Excise, Chennai vide C. No.IV/16/LF/2002-RF dated 31.05.2002.

2.2 Owing to rejection of exported material by the buyer, 500 kgs. of ranitidine HCL returned to the assesses by the buyer which was re-imported vide his Bill of Entry No. 011983 dated 31.05.2002 without payment of duty

under Notification No. 158/95-Cus dated 14.11.1995. It was reported by the assesses vide his letter dated 02.07.2002 and 08.07.2002 that there was a major fire accident in their factory on 02.07.2002 and the entire quantity of 500 kgs. of ranitidine HCL in question, stored in the Store Room along with the other materials have been burnt.

2.3 In terms of Rule 18 of the Central Excise Rules, 2002 and Notification No.40/2001 – (CE(NT) dated 26.06.2001 only when the goods are exported outside India, the Central Government may grant rebate of duty paid on such excisable goods. Hence, the 500 kgs. of ranitidine HCL destroyed in the fire accident on 02.07.2002 was to be treated as if not exported and as such the rebate claimed and obtained by the assesses on the 500 kgs. of ranitidine HCL is not admissible. Accordingly, it appeared that the rebate of duty amounting Rs.80,555/- sanctioned on the 500 kgs. of ranitidine HCL in question by the Maritime Commissioner and received by the assesses is liable for recovery from them in terms of the Central Excise Rules, 2002 read with Section 11A(1) of the Central Excise Act.

2.4 Therefore, the assesses were required to show cause vide O.C.No.173/2003 dated 03.04.2003 to the Deputy Commissioner of Central Excise, Cuddalore as to why the rebate of RS.80,555/- in question sanctioned by the Maritime Commissioner, Chennai and received by the assesses should not be recovered from them with interest under Section 11A(1) of the Central Excise Act, 1944 read with Section 11AB of the Central Excise Act, 1944 and Rule 18 of the Central Excise Rules, 2002. After due process of law the adjudicating authority confirmed the demand of Rs.80,555/- being the rebate of Central Excise duty paid on the 500 Kgs of impugned goods re-imported without being sold in another country, under 11A(2) of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notification No.40/2001-CE(NT) dated 26.6.2001 along with interest thereupon.

3. Being aggrieved by the said orders-in-original, applicant filed appeal before Commissioner (Appeals) who upheld the impugned orders-in-original and rejected the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed appeal before Hon'ble CESTAT, Chennai. Hon'ble Tribunal vide final order dated 11.3.11 dismissed the appeal and directed the applicants to file an application before revisionary authority within condonation of delay as the issues was related to rebate of duty of excise paid on the goods exported outside India.

5. Now the applicants have filed these revision applications against the impugned orders-in-appeal dated 15.03.2005 and 10.05.2005 under Section 35EE of Central excise Act, 1944 before Central Government on the various common grounds. The applicant has filed detailed grounds of revision applications. At the same time, they have filed applications for condonation of delay in filing revision applications on the following grounds :

5.1 Being aggrieved with the impugned orders-in-appeal, the applicant filed an appeal before the Hon'ble Tribunal, Chennai vide Appeal No. E/1076/2005. The Hon'ble Tribunal vide Stay Order No. 718 & 719/2006 dated 16.06.2006, directed us to pre-deposit Rs.4,00,000/- and report the compliance on 21.07.2006. As there was no communication from the applicant intimating the compliance with the Order, the Hon'ble Tribunal had passed a Final Order Nos. 613 & 614/2006 dated 21.07.2006. Subsequently, the applicant filed a Miscellaneous Petition for restoration of appeal. The Hon'ble Tribunal had passed a Misc. Order Nos. 561 & 562/2006 dated 09.12.2006, restoring the appeal dismissed, as there was a proof of compliance with the stay order by the applicant.

5.2 After a detailed hearing the Hon'ble Tribunal had passed a Final Order N. 459/2011 dated 11.03.2011, holding that the issue relates to rebate of duty of excise on goods exported to any country or territory outside India and

directed the applicant to file an application before the revisional authority to whom the revision applications are required to be filed, with a relief to consider the condition of delay in preferring the revision applications, if such applications are filed before the Revisionary Authority.

5.3 As per the Section 35EE of the Central Excise Act, 1944, the application before the Revisionary Authority should have been filed within three months from the date of communication of the Order in Appeal. Herein the applicant preferred an appeal before Hon'ble Tribunal under a *bona-fide* belief that the appeal was lying before the Hon'ble Tribunal against the said Orders-in-Appeal, which resulted in delay of 2287 days in filing this revision application, out of which 2266 days were covered within the Tribunal Appeal. The delay of 21 days from the date of receipt of the Final Order is due to the change of counsels thereafter which resulted in this further delay.

6. Personal hearing was scheduled in this case on 14.12.12. Shri A.P.Ravi, Advocate appeared on behalf of the applicants who reiterated the grounds of revision application. He also submitted that their remission of duty request is pending with Commissioner. Shri Saroj Kumar Shadangi, Assistant Commissioner appeared on behalf of the department and submitted that order-in-appeal being legal & proper may be upheld. He further contended that the revision application is filed by the applicant is time barred.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. Applicant has filed application for condonation of delay in filing these revision applications. Before proceeding further, these applications are to be decided first.

8.1 On perusal of records, Government observes that the applicant being aggrieved with the impugned Orders-in-appeal preferred an appeal before

Hon'ble Tribunal, which resulted in huge delay in filing these revision applications. In this regard Government finds it proper to go through the chronological events in filing this revision application which is as under:

	OIA No.23/2005(P)	OIA No.32.2005(P)
Date of passing of order in Appeal	15.3.2005	10.5.2005
Date of communication of OIA	1.4.2005	14.5.2005
Date of filing of appeal before Hon'ble CESTAT	16.8.2005	17.8.2005
Date of passing the final order of Hon'ble CESTAT	11.3.11	11.3.11
Date of communication of CESTAT order to applicant	14.3.11	14.3.11
Date of filing revision application	8.7.11	8.7.11
Total Time taken in filing revision application i.e. from 1.4.05/14.05.05 to 8.7.11	6 yrs. 3 months 7 days	6 yrs. 1 month 25 days
Time consumed before CESTAT, i.e. from 16.8.05/17.8.05 to 14.3.11	5 yrs. 6 months 29 days	5 yrs. 6 months 28 days
Effective time taken in filing revision application	8 months 9 days	6 months 28 days

From the above chart, it is quite clear that the revision applications are filed after expiry of 6 months.

8.2 Government notes that department has raised objection and stated that revision application is liable to be rejected as time barred since it is filed after stipulated time period. In this regard, Government observes that the revision applications are filed after stipulated time period 3^{months} and the delay in

filing the revision applications are more than 3 months. As such, revision application is filed after statutory time limit as laid down in Section 35EE of Central Excise Act, 1944. For understanding the relevant legal provisions, the relevant section is reproduced below:

8.3 "Section 35EE. 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 :

.....
.....
.....

(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."

8.4 As per said provisions of section 35EE the applicant was required to file revision application within 3 months. However, delay upto 3 months is condonable if justified reasons exist. In these cases, revision applications are filed after a delay of more than 3 months. As such the revision application has become clearly time barred as there is no provision under Section 35EE to condone the delay beyond the condonable period of three months.

9. Government notes that Hon'ble Supreme Court has categorically held in following cases that there is no description with the department authorities to extend the time limit as laid down in Central Excise Act.

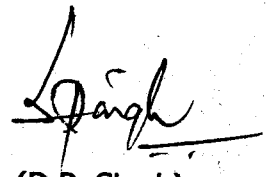
9.1 Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Mst. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid

down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

9.2. Hon'ble Supreme Court has held in the case of Union of India Vs Kirloskar pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under writ jurisdiction cannot direct the customs authorities to ignore time limit provided under section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of said section. In particular, the customs authorities who are creature of Customs Act cannot be directed to ignore or act contrary to section 27 of Customs Act. Government notes that section 35 EE of Central Excise Act, 1944 laid down time limit for filing revision applications and Central Excise Authorities cannot ignore such time limit. The ratio of said judgment of apex court is squarely applicable to this case.

10. In view of above circumstances, Government holds that the instant Revision Applications filed after time limit stipulated under section 35EE of Central Excise Act, 1944, are clearly time barred and is not maintainable. As such, Government rejects the revision application, as time barred and not maintainable without going into the merits of the case.

11. So Ordered.

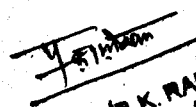


(D.P. Singh)

Joint Secretary to the Govt. of India

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ATTESTED


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Ministry of Finance (Dept. of Rev.)
संयुक्त सचयत/Govt. of India
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ORDER NO. 230-231 /2013-CX DATED 7.3.2013

Copy to:


1. Commissioner of Central Excise Puducherry, Post Box No. 104, Goubert Avenue, (Beach Road), Puducherry - 01.
2. Commissioner of Customs & Central Excise (Appeals) Chennai, 26/1, Mahatma Gandhi Road, Chennai - 34.
3. Asstt. Commissioner of Central Excise, Vallalar Nagar, Manjakuppam, Cuddalore - 01.
4. Shri A.P. Ravi, Advocate, M/s. Swamy Associates, New No. 18, Rams Flats, Ashoka Avenue, Directors Colony, Kodambakkam, Chennai - 600 024.

5. PS to JS(RA)

6. Guard File.

7. Spare Copy

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(P.K.Rameshwaram)
OSD (Revision Application)