

**REGISTERED  
SPEED POST**



**F.No.195/407/12-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....01/02/16

**ORDER NO. 24/2016-CX DATED 29.01.2016** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD 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 Order-in-Appeal No.  
US/03/RGD/12 dated 16.01.12 passed by the  
Commissioner of Central Excise (Appeals-II), Mumbai

Applicant : M/s. Cadila Health Care Ltd.

Respondent : Commissioner of Central Excise, Raigad.

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## **ORDER**

This revision application is filed by M/s Cadila Health Care Ltd., against the Order-in-Appeal No. US/03/RGD/12 dated 16.01.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants filed rebate claim of amount Rs. 16,94,0641/-. The original authority sanctioned the rebate claim of Rs. 15,77,461/- and rejected the claim of remaining amount of Rs. 11,66,03/-.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) on the ground that while disallowing the rebate claim of Rs. 11,66,03/-, the original authority had not mentioned any reasons. During the course of Personal Hearing the Commissioner (Appeals) took note of the applicant's submission that there is difference in FOB value and value shown in ARE-1 and the same is due to freight and insurance and accordingly, held that the original authority rightly rejected part rebate claim of Rs. 11,66,03/- paid over and above FOB value.

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

4.1 One of the grounds for dis-allowance of appeal is that the assessable value was more than correct FOB value and therefore, there was excess payment of duty and excess rebate could not be sanctioned by the adjudicating authority to the extent of said excess payment of Rs. 1,16,603/-. This being the position, even though Applicant has claimed rebate of duty paid on the CIF value instead of FOB value of each the consignment covered, an exporter is entitled to rebate of the entire duty of excise paid on a consignment of excisable goods on its export.

4.2 In the premises, below mentioned judgement of Honorable, Tribunal has clearly revealed that Applicant is entitled for the rebate of whole of the duty paid by him on export of excisable goods. Applicant has placed reliance upon judgment in case of [2010-TIOL-1663-CESTAT-BANG.] CCE, Bangalore, Vs. M/s. Maini Precision Products Pvt. Ltd. [reported as 2009(236) ELT 0143(Tri. Chennai)] and judgment in the case of reported in Sterlite Industries India Ltd., Vs. CCE, Tirunelveli.

4.3 In CBEC Circular No. 510/06/2000-CX dated 03.02.2000, issued from F.No. 209/29/99-CX.6, dated 03.02.2000, Board has clarified that, rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export covered by a claim.

5. Personal hearing was scheduled in this case on 06.07.2015, 24.07.2015 and 17.08.2015. The applicant vide letter dated 03.08.2015 received on 11.08.2015 informed that the matter be decided on merits and ----- the personal hearing. Nobody from department attended the hearing. Hence Government proceeds to decide the case on the basis of available records.

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

7. On perusal of records, Government observes that the applicants filed rebate claim of amount Rs. 16,94,0641/-. The original authority sanctioned the rebate claim of Rs. 15,77,461/- and rejected the claim of remaining amount of Rs. 11,66,03/- . Commissioner (Appeals) held that the rejected part amount was on account of duty paid excess of FOB value and hence, is not admissible. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above. The applicant has also filed on application for condonation of delay for delay of 4 days in filing Revision Application.

8. Government first proceeds to decide the issue of limitation in filing of Revision Applications after the stipulated three months period under Section 35 EE (2) of Central Excise Act 1944, as the applicant department has filed these revision application 4 days after initial stipulated three months period and as such, it is an undisputed fact that the Revision Application has been filed beyond the stipulated period of three months.

8.1 The time limit of filing Revision Application has been specified in Section 35EE(2) *ibid* which reads as under:

*"Section 35EE. Revision by Central Government:*

*(1) .....*

*(1A) .....*

*(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."*

*Further Rule 10(2) of Central Excise (Appeals) Rules, 2001 provides as under:-*

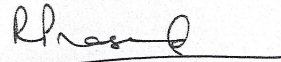
*"The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer."*

From perusal of above provisions, it is clear that stipulated period of filing Revision Application is three months from date of receipt of Order-in-Appeal and is deemed to have been filed only upon receipt of Revision Application in the office of Revision Application Unit. The Revision Application have been filed beyond three months period. This period may be extended by further three months provided sufficient cause has been shown which prevented the applicant from filing Revision Applications in time.

8.2 Government finds that the applicant in their application for condonation of delay has in a general manner mentioned that the delay in filing is due to postal delay even though application was sent by speed post as reason for delay in filing the Revision Application. Government notes that the applicant has relied upon copy of postal tracking report obtained from website of post department. On perusal of the same, Government notes that the details contained therein does not categorically substantiate the claim of the applicant that the impugned Revision Application was delivered on 24.04.2012 to this office. On the other hand the Revision Application as per receipt stamp was received in the department on 01.05.2012 vide report Dy. No. 3415/12. As such, the applicant has failed to give any documentary evidences in support of their claim for the delay in filing of appeal. Under such circumstances, Government is of the considered opinion that onus to show cause for not filing application is on the applicant who has failed to show sufficient cause that prevented him from filing Revision Application within stipulated period of three months. The Revision Application has been made contrary to the provisions of Section 35EE (2) and is, therefore, liable for rejection.

9. In view of above discussion, Government rejects the revision application as time barred without going into the merits of the case.

10. So, ordered.

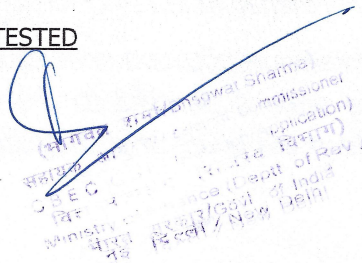


**( RIMJHIM PRASAD )**

Joint Secretary to the Government of India

M/s Cadila Health Care Ltd.  
Zydus Tower,  
Satellite Cross Roads,  
Sarkhej- Gandhinagar High way,  
Ahmedabad-380015

ATTESTED



Joint Secretary to the Government of India  
Ministry of Health & Family Welfare  
New Delhi

**ORDER NO. 24/2016-CX DATED 29.01.2016**

Copy to:

1. The Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.
2. The Commissioner of Central Excise (Appeals-II) Mumbai Zone, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Bhandra Kurla Complex, Bhandra (E), Mumbai.
3. The Assistant Commissioner (Rebate) Central Excise & Customs, Maritime Commissionerate, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.
4. PA to JS(RA).
5. Guard File.
6. Spare copy.

ATTESTED

  
(B.P.Sharma )  
OSD (Revision Application)

Commissioner (Appeals-II) Mumbai Zone  
Utpad Shulk Bhavan, Bhandra Kurla Complex, Bhandra (E), Mumbai.  
CEEC  
Ministry of Finance (Deptt. of Revenue)  
15, Road / New Delhi

