

**REGISTERED  
SPEED POST**



**F.No.195/622/12-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. 25/2016-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/225/RGD/12 dated 30.03.12 passed by the  
Commissioner of Central Excise (Appeals-II), Mumbai.

Applicant : M/s. Union Quality Plastics Ltd.

Respondent : Commissioner of Central Excise, Raigad,

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## ORDER

This Revision Application is filed by M/s Union Quality Plastics Ltd., against the Order-in-Appeal No. US/225/RGD/12 dated 30.03.12 passed by the Commissioner of Central Excise (Appeals-II), Mumbai, with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicants rebate filed under Rule 18 of Central Excise Rules,2002 read with Notification No. 19/2004-CE (N.T) dated 06.09.2004. The rebate claim was partly rejected by the original authority on the ground that the assessable value was more than FOB value and rebate claim is admissible only to extent of duty payable on FOB value.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the same as time barred having filed 27 days beyond stipulated 60 days period.
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 The applicants state and submit that the Hon. Commissioner (Appeals) rejected their condonation of delay application citing the decision of Hon. Tribunal in the case of M/s. Sadashiv Casting Ltd. Vs. CCE 2002 (140) ELT 183 (Tri. Del). In this case the facts are different than the Applicants, hence not applicable. This is not in respect of rebate claim, if not the appellant in this case need to have filed Revision Application and not appeal before Hon. CESTAT. The rebate is the beneficial scheme hence the appeal against the rejection of appeal by the Commissioner (Appeals) lies before the Hon. Joint Secretary to GOI, Revision authority by way of Revision Application.
  - 4.2 Applicants state and submit that the Export rebate is the beneficial scheme given to the Exporters by the Government. This is to see that duty should not be exported along with the goods. Such beneficial scheme should not be denied on flimsy reasons. Exporters have to face number of problems in exporting in the stiff competitive international market and getting the export remittances etc. They are occupied in this important thing that is exporting and getting the foreign currency to our country on export, therefore they depend on the employees for filing the rebate claim etc. Sometimes due to heavy work the employees forget to take necessary steps. They do not inform the management also. Same in this impugned case happened, the employee failed to bring to the notice of the rejection of rebate claim to the management. Due to this there is delay in filing the appeal. Further full amount of rebate is not denied only a part has been denied, this also might have lead to the conclusion of the employee confusion and mistake of the employee appeal was filed after 60 days. The delay of 27 days may please condoned in the interest of justice and genuine export.

4.3 The Applicants state and submit that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. This is only a reimbursement and not any kind of incentive. The Applicants has claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim in part only on technical grounds as is done by the adjudicating authority in the present case and rejection of appeal for delay in filing the appeal even through the delay was within the condonable limit of Hon. Commissioner(Appeals), is nothing but harassment to the genuine exporter and discouraging export.

4.4 The applicant has also contested the case on merits.

5. Personal hearing was scheduled in this case on 21.07.2015 and 11.08.2015. Hearing held on 11.08.2015 was attended by Shri R.V.Shetty, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attend hearing on behalf of department.

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. Government notes that rebate filed under Rule 18 of Central Excise Rules,2002 read with Notification No. 19/2004-CE (N.T) dated 06.09.2004 was rejected partly by the original authority on the ground that the assessable value was mere than FOB value and rebate claim is admissible only upto FOB value. Commissioner (Appeals) rejected the same as time barred having filed 27 days beyond stipulated 60 days period.

8. Government notes that the time limit of filing appeal before Commissioner (Appeals) has been provided under Section 35 of Central Excise Act, 1944. The said Section 35 reads as under :

*(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the*

*Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :*

*[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.*

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this Section shall be in the prescribed form and shall be verified in the prescribed manner.

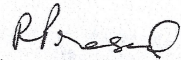
8.1 From the perusal of above said provision, it is clear that the appeal in initial required to be filed within initial stipulated 60 days. A further period of 30 days beyond initial 60 days period has been provided subject to the condition that the sufficient cause has been shown to the satisfaction of the Commissioner (Appeals) that the applicant has been prevented from filing the appeal within aforesaid 60 period.

9. Government notes that in this case, Commissioner (Appeals) in impugned Order-in-Appeal, has dealt in detail the aspect of delay in filing appeal before Commissioner (Appeals). Commissioner (Appeals) has observed that the applicant in their favour had stated that their concerned employee did not inform management regarding receipt of impugned Order-in-Original and hence, there was delay. The Commissioner (Appeals) has considered this aspect of delay in detail and observed that the reason advanced by the applicant was not a sufficient cause which could have prevented the applicant from filing the appeal within sixty (60) days. Such detailed findings of the appellate authority have not been controverted in the grounds of Revision Application by any substantial documentary evidences or submission. As such, Government finds force in the observations of Commissioner (Appeals).

10. In view of the above discussion, Government holds that the Commissioner (Appeals) has rightly dismissed the appeal as time barred and finds no reason to interfere with the impugned Order-in-Appeal and upholds the same.

11. The Revision Application is disposed off in above terms, without going into merits of the case.

12. So, ordered.



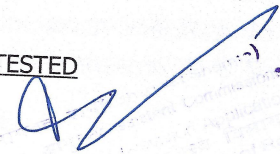
**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

M/s Union Quality Plastics Ltd.,  
5<sup>th</sup> Floor, A.G.H. Chambers,  
379/381, Narsi Natha Street,  
Mumbai-400009.

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Ministry of Labour & Employment  
भारत सरकार / Govt. of India  
दिल्ली / New Delhi

**ORDER NO. 25/2016-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 Deputy Commissioner Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai-410206.
4. Shri R.V.Shetty, Advocate, 101-E, Sterling Court, Next to Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri (E), Mumbai.
5. PA to JS(RA)
6. Guard File.
7. Spare copy.

ATTESTED



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

CE  
Ministry of Finance/Govt. of India  
नव दिल्ली / New Delhi

