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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

F. NO. 195/31/WZ/2022-RA / 2328

Date of Issue: 12.10.2023

ORDER NO. 378/2023-CX (WZ) /ASRA/Mumbai DATED 12.10.2023 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. Huntsman International (India) Private Limited  
Respondent : Pr. Commissioner of CGST&CX, Vadodara I  
Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No.  
Vad-Excus-001-App-193-2022-23 dated 28.09.2022  
passed by Commissioner, CGST & Central Excise,  
Appeals, Vadodara.

**ORDER**

This Revision Application has been filed by M/s. M/s. Huntsman International (India) Private Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. Vad-Excus-001-App-193-2022-23 dated 28.09.2022 passed by Commissioner, CGST & Central Excise, Appeals, Vadodara.

2. Brief facts of the case are that the applicant had filed rebate claims which were rejected initially. The case was traversed to the Revisionary Authority, who vide its order dated 22.11.2021, ruled in favor of the applicant, stating that the claimed duty rebate was admissible. As a result, the rebate was sanctioned to the applicant but without interest vide OIO No. Ref/02/1982/2022-23 dated 18.04.2022. Being Aggrieved, Applicant preferred appeal before Commissioner, CGST & Central Excise, Appeals, Vadodara, who vide impugned OIA dismissed the appeal on being barred by time on account of not being filed within stipulated time period prescribed under Section 35 of the Central Excise Act, 1944.

3. Aggrieved, the applicant has filed the subject Revision Application on the following grounds: -

- i. The Order-in-Original No., Ref/02/1982/2022-23 dated 18.4.2022, was received on 22.4.2022. The Appeal was filed on 5.8.2022. The due date for filing the Appeal was 22.6.2022. The Applicants, did not file the Appeal before the due date. The reason for the delay in filing the Appeal is that the Applicants, were following up with Office of the Jurisdictional Assistant Commissioner, CGST and Central Excise, for payment of Interest, under the provisions of Section 11-BB of Central Excise Act 1944. The Applicants, have also brought to the notice of the Department that such Interest is payable in view of the Order, passed by Honourable Apex Court, in case of RANBAXY LABORATORIES LTD. VERSUS UNION OF INDIA, reported in [2012 (27) S.T.R. 193 (S.C.)] and clarification, issued by Central Board of Excise & Customs, vide Circular No. 670/61/2002-CX, dated 1-10-2002. The Department has not



sanctioned and paid Interest amount and considerable time was consumed in the said follow-up. Since there was no alternative, the Applicants have decided to file the Appeal before Commissioner, CGST and Central Excise (Appeals), Vadodara

- ii. It is submitted that, the delay has thus occurred due to bonafide reasons without there being any negligence or any other mala fide purpose. As per the Proviso to Section 35 of Central Excise Act, 1944 and Section 85 (3A) of Finance Act, 1994, the Commissioner (Appeals), is competent to condone the delay and allow the Appeal to be presented within a further period of thirty days.
- iii. The Government has issued Notifications, under Section 168-A of the CGST Act, 2017, wherein, the time limit for completion of various actions, by any Authority or by any Person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said Notifications
- iv. In view of the genuine delay in filing the Appeal due to the reasons explained above, it is submitted that the delay in filing Appeal before Commissioner, CGST and Central Excise (Appeals), Vadodara, is condonable.
- v. The Adjudicating Authority has sanctioned Rebate Claims amounting to Rs. Rs. 20,56,63,609/ involving three Rebate Claims). However, the Adjudicating Authority, has not paid Interest to the Applicants, in terms of Section 11-BB of Central Excise Act, 1944.
- vi. Applicant has placed reliance on various case laws.
- vii. In view of above, applicant requested to allow the payment of interest on delayed refund of rebate claim.

4. For personal hearing, Shri. JC Patel, Advocate and Shri Ashish Soni, Import Export Lead, appeared and submitted that appeal was filed with a wrong office. They submitted copies of a few letters and copies of a few judgments on the matter. They requested to allow the application.

5. Government has carefully gone through the relevant case records, the written submissions and also perused the impugned Order-in-Original and the Order-in-Appeal and the Revision Application.

6. Government notes that the Commissioner (Appeals) vide the impugned Order-in-Appeal has found the appeal of the applicant to be time barred and has dismissed the same without going into the merits of the case. Government also notes that Commissioner (Appeals) has computed the time limit by taking into account the date on which the Order-in-Original dated 22.04.2022 was served upon the applicant. Further, Government finds that the applicant filed appeal before Appellate Authority on 05.08.2022 as recorded in the impugned Order-in-Appeal. Government finds that the applicant in the subject application has not disputed the above dates.

7. Government notes that the appeal before Commissioner (Appeals) was made after almost 105 days, which is 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:

*"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 up to 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 subsection (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 up to 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.”*

The above decision of the Apex Court leaves no doubt that in the present case, the Commissioner (Appeals) did not have the power to condone the quantum of delay on the part of the applicant in filing the rebate claim.

8. Further, the applicant argued that the delay was due to their inadvertent filing of the application with the wrong office, instead of submitting it to the Commissioner (Appeals). In this regard, Government notes that the same case has been referred to the Commissioner (Appeals) in the past. Therefore, they cannot plead that they mistakenly filed the application in the wrong office. Even if it were true, the delay cannot be attributed to the Department; it solely reflects the applicant's careless approach. Moreover, Government finds that the evidence being introduced now is unilateral, unreliable, and an afterthought.

9. Furthermore, Government finds that Appellate Authority has discussed the matter correctly and in detail. Government also notes that Applicant has placed reliance on various case laws. Some of the cases cited by the applicant involve delays within the condonation period and others are unrelated to the facts of the case. Therefore, these case laws are not applicable to the case in hand. Thus, Government finds the decision of the Commissioner (Appeals) to reject the Appeal on the grounds of it being time barred to be proper and legal. Government refrains from going into the merits of the case, as the appeal by the applicant before the Commissioner (Appeals) has been found to be time barred

10. In view of the findings recorded above, Government finds no reason to Annul or modify the impugned Order-in-Appeal. The Revision Application is Dismissed.

  
12/10/23

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 378/2023 -CX (WZ) /ASRA/Mumbai dated 12.10.2023

To,

1. The Principal Commissioner of CGST, Vadodara-I GST Bhavan, Race Course Circle, Vadodara-390007.
2. M/s. Huntsman International Pvt. Ltd., Village- Umraya, Taluka- Padra, District- Vadodara, Gujrat- 391440.

Copy to:

1. The Commissioner (Appeals), GST & Central Excise, GST Bhavan, Ist Floor Annexe, Race Course Circle, Vadodara-390007
2. Sr. P.S. to AS (RA), Mumbai
3. Notice Board.