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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. 195/328-332/14-RA/6459

Date of Issue: ~~10.2021~~  
11.11.2021

ORDER NO. 426-430/2021-CX (WZ) /ASRA/MUMBAI DATED 28.10.2021  
OF THE 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  
CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Kirti Industries,  
Survey No. 490/2/2,  
Village Galonda,  
Silvassa

Respondent : The Commissioner, CGST, Vapi.

Subject : Revision Applications filed under Section 35EE of Central  
Excise Act, 1944 against the Order-in-Appeal No. VAP-  
EXCUS-000-APP-137 to 141-14-15 dated 10.07.2014  
passed by the Commissioner (Appeals), Central Excise,  
Vapi.

**ORDER**

These Revision applications have been filed by M/s Kirti Industries, Survey No. 490/2/2, Village Galonda, Silvassa (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAP-EXCUS-000-APP-137 to 141-14-15 dated 10.07.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers of 'Pan Masala with Gutkha' falling under CSH 24039990 of First Schedule to the Central Excise Tariff Act, 1985. These goods were notified under Section 3A of Central Excise Act, 1944 and the duty is chargeable with reference to number of operating packing machines in the factory. The applicants are working under Compounded Levy Scheme and the duty is levied under Section 3A read with Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred to as "the PMPM Rules") as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. The duty payable is to be calculated under Rule 7 of the said PMPM Rules read with Notification No. 42/2008-CE dated 01.07.2008, on the number of operating packing machines in the factory during the relevant period. The applicant had filed 5 Rebate claims in respect of duty paid on impugned goods claimed to have been exported by them.

3. The details of rebate claims filed and the orders rejecting the same are as under :-

Sl. No.	ARE-1 No. / Date	OIO No. / Date	Amount of Rebate claimed (Rs.)
1.	19/12-13 dt. 14.07.2012	884/DC/SLV-IV/Rebate/2013-14 dated 31.12.2013	1,75,00,000/-
2.	25/12-13 dt. 15.08.2012	885/DC/SLV-IV/Rebate/2013-14 dated 31.12.2013	1,75,00,000/-
3.	30/12-13 dt. 08.09.2012	886/DC/SLV-IV/Rebate/2013-14 dated 31.12.2013	1,75,00,000/-
4.	29/12-13 dt. 29.08.2012	887/DC/SLV-IV/Rebate/2013-14 dated 31.12.2013	39,12,056/-
5.	28/12-13 dt. 29.08.2012	888/DC/SLV-IV/Rebate/2013-14 dated 31.12.2013	39,12,056/-

4. Aggrieved by the said Orders in Original, the applicant had filed appeals before the Commissioner (Appeals), Central Excise, Vapi on the following grounds. The Commissioner(Appeals) vide Orders in Appeal No. VAP-EXCUS-000-APP-137 to 141-14-15 dated 10.07.2014 rejected the applications for COD(condonation of delay) in all the five appeals of the applicant and rejected their appeals on limitation in view of the fact that the applicant had filed the appeals beyond the statutory time limit of sixty days. The Commissioner(Appeals) formed the view that the COD applications deserved to be rejected for want of sufficient and reasonable grounds for delay in filing the appeal.

5. Aggrieved by the Orders-in-Appeal, the applicant has filed the instant Revision Applications to contend against the rejection of their appeal before Commissioner(Appeals) on grounds of limitation as well as on the merits of the case.

6. Government observes that the issue involved in the present case falls within a narrow compass. The appeal of the applicant has been rejected by the Commissioner(Appeals) on grounds of limitation. The impugned order does not discuss the merits of the case. In this regard, the text of para 2 of judgment of the Hon'ble Supreme Court in Commissioner of Central Excise, Chandigarh vs. Smithkline Beecham Co. Health C. Ltd.[2003 TIOL 58 SC CX] is adverted to.

“2. This appeal is filed against an order passed by the Customs, Excise and Gold(Control) Appellate Tribunal dated 19<sup>th</sup> December, 2002. The Tribunal was hearing an appeal against an order dated 23<sup>rd</sup> April, 2002 passed by the Commissioner of Central Excise(Appeals). By that order the Commissioner(Appeals) had merely dismissed the appeal because pre-deposit was not made. The Commissioner(Appeals) has not gone into the merits. Therefore, the only question before the Tribunal was whether pre-deposit was required or not. The Tribunal has chosen to go into the merits and decided the appeal on merits also. This should not have been done.”

The judgment of the Hon'ble Supreme Court lays down the law that when an appeal is against an order by a lower authority on a ground other than on the merits, the next appellate authority should examine the verity of that

ground alone without going into the merits of the case. The facts in the instant case are similar in that the Commissioner(Appeals) has not discussed the merits of the case but has considered only the limitation aspect. On applying the ratio of the judgment of the Hon'ble Supreme Court cited above it is inferable that the revision application cannot be taken up for a decision on the merits of the case and decision in these revisionary proceedings must be confined to the question of whether the delay in filing appeal before the Commissioner(Appeals) was condonable or otherwise.

7. On going through the revision application, the impugned Order-in-Appeal, Government finds that the order-in-original was received by the applicant on 14.01.2014 and the appeals were filed on 15.04.2014. The applicant had filed an application for condonation of delay of 28 days as 12.04.2014 & 13.04.2014 were Saturday and Sunday and 14.04.2014 was a Gazetted Holiday. The applicant has explained the delay by pointing out that the unit was not functioning due to the ban on production and sale of gutkha and therefore staff was not available to attend to these issues. The applicant has further explained that the illness of the partners father coupled with his own sickness kept him away from work and delayed the filing of appeal. The delay was sought to be explained in such manner. The applicant has also relied upon various case laws to fortify their submissions that the delay which was within the condonable period of 30 days should be condoned.

8.1 Government observes that the Hon'ble Supreme Court has in Rewa Coal Fields Ltd.[AIR 1962 SC 36] held that each day of delay has to be explained. The applicant in the present case had filed an application for condonation of delay alongwith the appeal filed before the Commissioner(Appeals). However, this application for condonation of delay did not contain any submissions about the partners fathers health issues and the partner himself being afflicted with eye problems. The submissions detailing these reasons were not even made during the personal hearing before the Commissioner(Appeals) on 09.06.2014. These reasons for delay in filing appeal were contained in an affidavit dated 18.06.2014 filed on

23.06.2014. The observations of the Commissioner(Appeals) that the submissions about illness is an afterthought do hold substance. If the reason for delay was genuinely due to the illness of the partners father and the illness of partner himself, it should have formed part of the application for condonation of delay filed by the applicant. The very fact that the applicant had not mentioned these grounds in their condonation of delay application and that these grounds were transplanted surrogately by means of an affidavit filed much later after conclusion of personal hearing in the matter suggests that the inclusion of these grounds were a last ditch effort to have the delay condoned.

8.2 The applicant has further stated that they could not file the appeal in time as their staff was not attending office on a regular basis and therefore the management was not aware of the rejection order in time. In this regard the Commissioner(Appeals) has very rightly observed that the applicant cannot take this ground as the partner of the firm himself had received the orders on 14.01.2014. Needless to say, the partner himself was part of the management. The applicant has also advanced an explanation that their factory had closed down and they were busy filing other appeals before Tribunal. The reason that the factory was closed and that the applicant was filing other appeals cannot be the reason for failure to file appeal in time as the statutory time limit for filing appeal is sacrosanct and uniformly applicable to all appeals. The applicant has explained the delay by mentioning illness of his father and his own illness for the first 30 days after receipt of the orders. For the subsequent appeal period, the applicant has claimed to have forgotten about the receipt of the orders. The purpose of having the procedure of condoning delay in cases is to ensure that a diligent litigant who has sincerely made efforts to file appeal within time is not denied justice. The reason of having forgotten the matter or misplaced the papers is unacceptable as the law does not come to the rescue of the indolent. A litigant who is tardy and negligent is undeserving of leniency.

8.3 The applicant has placed reliance upon various case laws to hold that the delay in filing appeal must be condoned. However, the statute allows for

condonation of delay only on sufficient cause being shown to the satisfaction of the appellate authority. In the present case, the causes shown by the applicant for the delay in filing appeal are not convincing. The judgments cited and relied upon by the Commissioner(Appeals) in the case of Premium Packaging (P) Ltd.[2005(181)ELT 0064(Tri-Del)], S. Benjamin[2012-TIOL-663-CESTAT-MAD], S. S. Sahi vs. Commissioner of Customs, Mumbai[2011(271)ELT 249(Tri-Mum)], Janta Glass Ltd.[2012-TIOL-1693-CESTAT-AHM], CCE, Cochin vs. Mathew Kurian[1999(107)ELT 289(SC)] are relevant and applicable to the facts of the present case. Government therefore concurs with the views expressed by the Commissioner(Appeals) and holds that the applications for condonation of delay deserve to be rejected, that the appeals filed by the applicant have rightly been rejected as hit by limitation and were not maintainable under Section 35 of the CEA, 1944.

9. The revision applications filed by the applicant are therefore rejected and the OIA No. VAP-EXCUS-000-APP-137 to 141-14-15 dated 10.07.2014 passed by the Commissioner(Appeals), Vapi is upheld.

*Shrawan*  
28/10/21  
(SHRAWAN KUMAR)

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

To  
M/s. Kirti Industries,  
Survey No. 490/2/2,  
Village Galonda,  
Silvassa

ORDER NO. 426<sup>430</sup>/2021-CX (WZ) /ASRA/MUMBAI DATED 28.10.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, 2<sup>nd</sup> floor, Hani's Landmark, Vapi Daman Road, Chala, Vapi - 396.
2. The Commissioner of GST & CX, Surat Appeals, 3<sup>rd</sup> floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.