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F.No. 195/27-28/11-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...13/6/12

Order No. 560-561/13-cx dated 12-06-2013 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,
1944 against the Order-in-Appeal No.
192-193 CE/MRT-I/10 dated 30-08-2010
passed by Commissioner of Central Excise
(Appeals), Meerut-I.

APPLICANT : M/s. Cooper Pharma Ltd.,
Dehradun, UP.

RESPONDENT : Commissioner of Central Excise,
Meerut-I.

ORDER

These revision applications are filed by M/s. Cooper Pharma Ltd., Dehradun, UP against the Order-in-Appeal No. 192-193 CE/MRT-I/10 dated 30-08-2010 passed by Commissioner of Central Excise (Appeals), Meerut-I with respect to Orders-in-Original passed by Deputy Commissioner of Central Excise, Division, Dehradun.

2. Brief facts of the case are that the applicants are engaged in the manufacture of excisable goods namely 'Drugs and Medicines'. The applicants filed the rebate claims under Rule 18 of the Central Excise Rules, 2002 with the adjudicating authority by stating that the said duty was paid by them on inputs used in the manufacture of exported goods and they are claiming rebate of the same under Notification No. 21/2004-CE (NT) dated 06-09-2004 as amended. The Show Cause Notices were issued to the applicants on the sole ground that the applicant exported the goods prior to the date on which permission was granted by the jurisdictional Assistant Commissioner. The original authority vide impugned Order-in-Original rejected the rebate claim on above said grounds.

3. Being aggrieved by the said Orders-in-Original, applicants filed appeals before Commissioner (Appeals) who allowed appeal in one case, however rejected the appeal in other case on the ground that the appeal was filed after a delay of 8 days beyond initial stipulated 60 days period.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 In spite of taking all possible precaution the order of the Deputy Commissioner, erroneously was placed by the clerk Sh. Yakesh Kumar, employee in the head office at Delhi in another file. It is on such account that the said order could not be traced and sent to the advocate for preparing of the appeal. The efforts were made to trace-out the above order of the Deputy Commissioner in the head office and after a good amount of struggle it could only be retrieved from the

file on 05-04-2010. Immediately thereafter the case was sent for preparing of the appeal to advocate. That the delay in filing of the appeal is not intentional but due to the circumstances beyond control.

4.2 The Commissioner (Appeals) had not considered the appeal on merits at all and had decided the same only on the ground that the appeal was beyond the time of 60 days and that the applicant had no specific reason for condoning the delay. It is very clear from the first proviso to section 35 of the Central Excise Act, 1944 that the Commissioner (Appeals) may if he is satisfied that the applicant was prevented by sufficient cause, than only the appeal will be allowed to be presented within a further period of 30 days. It is already submitted supra that the delay is bona-fide and unintentional. That the Commissioner (Appeals) has the power to condone the delay and the same may be exercised in favour of the applicant.

4.3 In this regard, applicant relying on the following judgments passed by the Hon'ble Supreme Court on the identical issue:-

i) Collector, Land Acquisition Anantnag and another Vs. M.S. Katiji and others reported in 1987 (28) ELT 185 (SC).

ii) Bhag Singh and others Vs. Major Daljit Singh and others reported in 1987 (32) ELT 258 (SC).

iii) Municipal Corporation, Gwalior Vs. Ramcharan (D) by LRS reported in 2002 (142) ELT 275 (SC).

5. Personal hearing was scheduled in this case on 07-08-2012 & 09-10-2012, 06-12-2012 & 20-02-2013. Nobody attended the hearing. Hence, Government proceeds to decide the case finally on the basis of available records.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

7. Government observes that the original authority had rejected rebate claim of applicant solely on ground that applicant exported the goods prior to the date of

approval of input-output norms by the jurisdictional Assistant Commissioner of Central Excise. The applicants filed appeal before Commissioner (Appeals) who allowed appeal in one case, however rejected the appeal in this case on the ground that the appeal was filed after a delay of 8 days beyond the initial stipulated 60 days period. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government observes that the applicant had filed an application before Commissioner (Appeals) for condonation for delay of said 8 days by stating that impugned Order-in-Original was erroneously placed by one of their employee in another file and the same could be traced after more than two months and immediately after that they filed appeal before Commissioner (Appeals).

8.1 For understanding the relevant legal provisions, the relevant section is reproduced below:

SECTION 35. Appeals to Commissioner (Appeals).— (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. "

From above, it is clear that the applicant was required to file appeal within 60 days. The delay upto 30 days can be condoned. In this case, the appeal, before Commissioner (Appeals) was filed after 68 days, which falls within condonable period.

9. Government notes that applicant had simply stated in their application for condonation of 8 days delay in filing appeal that their employee had kept the Order-in-Original in some other file and as soon on the same was traced, immediately there after appeal was filed. This reason cannot be called a valid reason for delay. Applicant had the option to get copy of Order-in-Original from the Central Excise office. But they did not care for the statutory time limit and filed appeal late. The case laws cited by applicant cannot be made applicable here since applicant was not prevented by sufficient cause from presenting the appeal in time. As such, Commissioner (Appeals) has rightly rejected the appeal on time barred.

10. In the light of the aforesaid discussion, Government find no infirmity in the impugned Order-in-Appeal and therefore upholds the same. Since appeal is rejected as time barred this revision application is not maintainable.

11. Revision Applications are thus rejected in terms of above.

12. So, Ordered.



(D.P. Singh)

Joint Secretary to the Government of India

M/s. Cooper Pharma Ltd.,
C-3, Selaqui Industrial Estate,
Dehradun, UP.

ATTESTED



(भागवत शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revu)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. S60-561/13-Cx dated 12-06-2013

Copy to:

1. The Commissioner, Customs & Central Excise, Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005.
2. The Commissioner (Appeal), Customs & Central Excise, Meerut-I, Opp. CCS University, Mangal Pandey Nagar, Meerut-250 005.
3. The Deputy Commissioner of Central Excise, Division, Meerut-I.
4. Guard File.
- ✓ 5. PS to JS (Revision Application)
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)