

REGISTERED  
SPEED POST



**F.No. 195/146/2012-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6 FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....30/6/2015

**Order No. 14/2015-CX dated 30.06.2015** 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 the Order-in-Appeal No. 104-  
CE/MRT- I/2011 dated 22.12.2011 passed by Commissioner  
of Central Excise (Appeals), Meerut-I.

Applicant : M/s. Coral Laboratories Ltd.

Respondent : Commissioner of Central Excise, Meerut -I

\*\*\*\*\*

**ORDER**

This revision application is filed by M/s Coral Laboratories Ltd, (hereinafter referred as Applicant) against the Order-in-Appeal No. 104-CE/MRT-I/2011 dated 22.12.2011 passed by the Commissioner( Appeals) Central Excise, Meerut-I with respect to Order-in-Original R-168/2010 dated 10.09.2010 passed by the Deputy Commissioner of Central Excise, Dehradun.

2. Brief facts of the case are that the applicant engaged in the manufacture of excisable goods, namely " Drugs & Medicines", filed a rebate claim on 11.06.2010 for Rs 2,26,697.22 under Notification No.21/2004-CE(NT) dt.06.09.2004 read with Rule 18 of the Central Excise Rules, 2002, claiming that the said amount had been paid by them on the inputs used in the manufacture of goods, exported as per the following details-

SL. No.	ARE-2 No.& Date	Shipping Bill No.& Date	Bill of Lading No.& Date	Comm. Invoice No.& Date	Duty involved on inputs(Rs.)
1	EXI11/09-10 dt.19.02.10	8173306 dt.22.02.210	BOM/PRO/BN D/09/190 dt.25.02.10	CLL/EXP/102/ 09.-10 dt. 27.02.10	70699.00
2	EXI12/09-10 dt.19.02.10	8173306 dt.22.02.210	BOM/PRO/BN D/09/190 dt.25.02.10	CLL/EXP/102 09-10 dt. 27.02.10	155997.00
				TOTAL	226696.00

3. The Deputy Commissioner, Central Excise, Dehradun vide Order-In-Original No.R-168/2010 dated 10.09.2010 rejected the rebate claim on the grounds that the applicant had failed to fulfill the conditions laid down under Notification No. 21/2004 dated 06.09.2004, read with Notification No. 42/2001-CE(NT) dated 26.06.2001.

3.1. Being aggrieved by the said Order-In-Original, applicant filed appeal before Commissioner (Appeals) who dismissed the same vide Order-In-Appeal No. 104-CE/MRT-I/2011 dated 22.12.2011 by holding the appeal as time barred without going into the merits of the case.

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

**4.1 That the issues to be decided in revision application are:-**

(a) That whether the procedural lapse/breaches may lead to denial of substantive benefit, which is extended under the provisions of the Act for exporters who earn precious foreign currency for the country?

(b) That whether the incorrect mentioning of date of receipt of order may lead to denial of substantive benefit specially when the same took place due to improper communication, without any intention to do any wrong thing and especially when the delay is only for a period of 03 days?

**4.2. That the applicant would like to place the followings with regard to first issue to be decided :**

The Department has alleged that:

i The party has at Table 2 of the AREs under the column " rebate admissible under Rule 18" mentioned "N.A". Further amount of duty paid on excisable material and packing material used in manufacture of export goods is also not mentioned by the party on the AREs.

ii The party has exported the goods on AREs whereon no self-certification is incorporated on AREs.

b. That the department has not appreciated that the applicant even before exporting the goods obtained input output ratio approved for export of manufactured goods and had categorically communicated his stand that rebate of input stage duty shall be claimed.

c. That the department has held that the applicant had mentioned NA in the column "rebate admissible under Rule 18" whereas the said column is blank in the ARE-2s.

d. That the department has further failed to appreciate the specific declaration by the applicant on the AREs that "we have been granted permission by AC or DC of Central Excise Vide V(30)Tech/Coral/02/10/1089 dated 03.02.2010 for working under notification no.21/2004-CE(NT) dated 06-09-2004".

e. That the department has further failed to appreciate that the details of duty paid on excisable materials and packing materials used in the manufacture of export goods for which rebate under Notification no. 43/2001-CE(NT) dated 26.06.2001 is being claimed has been duly mentioned in the Table 2 of the said AREs.

f. That it has not been appreciated that intimation towards self sealing of consignment was also furnished before the department.

g. That the applicant has duly substantiated the exports by filing all the requisite documents and as such it is not in dispute that the goods have actually been exported and convertible foreign currency has been earned for the country.

h. That the department has just rejected the rebate claim on such grounds which are just of procedural nature. That in catena of judgments it has been held that substantive benefit should not be denied on the count of procedural lapses. That reliance is placed on the following judgments in this regard:

- Commissioner of Central Excise, Bhopal: 2006 (205) ELT 1093 (G.O.I.)
- Barot Exports Equivalent 2006 (203) ELT 0321 (G.O.I.)
- Modern Process Printers: 2006 (204) ELT 0632 (G.O.I.)
- Commissioner of Central Excise & Customs, Nagpur: 2006(200) ELT 0175(G.O.I)

- KRISHNA FILAMENTS LTD : 2001 (131) EIT 726 (G.O.I.)
- ALLANASONS LTD: 1999 (111) EIT 295 (G.O.I.)

**4.3 That the appellant would like to place the followings with regard to second issue to be decided:**

- a. That there has been an inadvertent delay of three days in filing the appeal, which was not admitted due to communication error between the plant and the consultant as the plant is in Dehradun and consultant was in Daman.
- b. That the issue with regard to late filing of appeal was not at all raised at the time of personal hearing before the Commissioner (Appeals), if the said fact had come in the knowledge of the Commissioner (Appeals), he could have afforded another opportunity of being heard to the applicant and could have asked for substantiation of his stand on this count, but no opportunity on this count was afforded, instead the appeal was dismissed on this count only, leading to denial of legitimate benefit available to the applicant.
- c. That the Commissioner (Appeals) could have upon calling the applicant assessed the factual circumstances and could have condoned the delay in appeal as he was possessed with powers for the same and thereafter could have passed speaking order on the merits of the case, which he has failed to do.
- d. That even without affording any opportunity of substantiating his stand he has held that the applicant mis-declared the date of receipt and as such is not entitled for any leniency as they have tried to mislead the appellate authority, which amounts to a conduct bereft of genuineness and bonafide.
- e. That apart from dismissing the appeal on this short count he has not considered merits of the case and has not passed any speaking order on other issues and as such it is amply clear that the principles of natural justice have been grossly violated and applicant has been denied legitimate benefit available to him under the provisions of the Act and Rules made there under.

5. Personal hearing in this case held on 01.04.2015 was attended by Shri Rajesh Gupta, Chartered Accountant, on behalf of the applicant, who reiterated the grounds of revision application. An affidavit was also submitted to the effect that the delay of 3 days in filing appeal before Commissioner (Appeals) was not intentional. He requested that the case may be considered for allowing them legitimate benefit of rebate and that delay of 3 days may not be taken against the applicant.

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

7. On perusal of records, Government notes that in this case the appeal filed against the order of adjudicating authority was rejected as time barred, since appeal was filed before Commissioner (Appeals) after expiry of stipulated period of 60 days for filing such appeal. Now the applicant has filed this revision application on the grounds stated in para 4 above. An affidavit dated 31.03.2015 has also been presented wherein it is admitted that Order-In-Original was received on 17.09.2010 and forwarded to their consultant in Daman; that it appears dates were not properly communicated to the consultant leading to mentioning of incorrect date; that appeals were signed by totally relying on credibility of the Counsel; and that whatever happened was due to unawareness of applicant and mistake of Counsel. At the outset it needs to be decided whether appeal was rightly rejected as time barred by Commissioner (Appeals).

8. In this regard, Government observes that it is an undisputed fact on record that applicant had filed appeal before Commissioner (Appeals) on 19.11.2010 against the Order-In-Original dated 10.09.2010 and mentioned the date of receipt of Order-In-Original as 08.11.2010, whereas as per a report from the Divisional Office, Dehradun the impugned order was received by the applicant on 17.09.2010 along with acknowledgement in token of receipt.

9. Government notes that as per Section 35 (1) of Central Excise Act, 1944 an appeal has to be filed within sixty days from the date of communication of

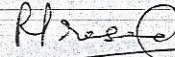
Order-In-Original and Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal, is empowered to condone the delay upto thirty days. In this case, appeal is admittedly filed after the stipulated time of sixty days. The Commissioner (Appeals) has rejected the appeal on the ground that it is barred by time. This part of the findings is not challenged by the applicant. Admittedly, the appeal had been filed beyond the period of limitation. However, there was no request made by the applicant before Commissioner (Appeals) seeking condonation of delay. On the contrary a wrong date of receipt of Order-In-Original has been mentioned which would not have come to light but for the report from the Division. The Commissioner (Appeals) did not find reason to condone the delay as the applicant did not seek any condonation and mis declared the date of receipt of Order-In-Original in their appeal before Commissioner (Appeals) in an attempt to show that it is filed within time. This fact is also not challenged by the applicant.

10. Government further finds that the contention of the applicant before the Revisionary Authority that the mistake of mentioning wrong date of receipt of Order-In-Original is of its Counsel, the applicant signed the appeal relying on the Counsel is not tenable as it reflects the non-serious and frivolous attitude of the applicant in filing appeal and is clearly an afterthought. The responsibility for filing true and correct declaration of the factual information such as date of receipt of Order-In-Original clearly lay with the applicant and this burden cannot be shifted by the applicant on anybody else. A liberal attitude therefore, cannot be adopted in case where the delays are deliberate acts or even negligence on part of the applicant. In the circumstances, it cannot be said that the order passed by Commissioner (Appeals) is erroneous.

11. In view of above discussion, Government holds that Commissioner (Appeals) has rightly rejected the appeal as time barred and therefore the revision application cannot be entertained on merits of the case under Section 35EE of Central Excise Act, 1944. Government does not find any infirmity in the impugned Order-In-Appeal and therefore upholds the same.

12. The revision application is thus rejected in above terms.

13. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Coral Laboratories Ltd.,  
Plot No. 27-28, Selaqui,  
Dehradun.

Attested.



Under Secretary, GOI (RA)

शुभकला शर्मा :  
Shaukatala  
अध्यापक (स.स.)  
Under Secretary (RA)



**GOI Order No. 14/2015-CX dated 30.06.2015.**

Copy to:-

1. The Commissioner of Central Excise Meerut\_I, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut\_I, Mangal Pandey Nagar, Opp. C.C.S. University, Meerut-250005.
3. Mr. Rajesh Gupta, FCA, 1<sup>st</sup> Floor, MIG Building, 88, Nehru Colony, Dehradun-248001.
4. The Assistant Commissioner of Central Excise, Division-Dehradun
5. PA to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED.

( SHAUKAT ALI )

Under Secretary to the Government of India (RA Unit)

