

REGISTERED
SPEED POST



F.No. 195/41-44/10-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...18-3-14.....

Order No. 75-78/14-cx dated 13-3-2014 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.
US/357-360/RGD/2011 dated NIL (received by applicant
on 01-11-2011) passed by Commissioner of Central
Excise, (Appeals), Raigad.

Applicant : M/s. Intas Pharmaceuticals Ltd.,
Plot No. 457 & 458, Village Matoda,
Taluka Sanand, Distt-Ahmedabad.

Respondent : Commissioner of Central Excise,
Raigad.

ORDER

These revision applications are filed by the applicant M/s. Intas Pharmaceuticals Ltd., Plot No. 457 & 458, Village Matoda, Taluka Sanand, Distt- Ahmedabad against the Orders-in-Appeal No. US/357-360/RGD/2011 dated NIL (received by applicant on 01-11-2011) passed by the Commissioner of Customs (Appeals), Raigad with respect to Order-in Original No. 771/10-11 (Reg.), Raigad dated 16-08-2010 passed by the Assistant Commissioner of Central Excise, Raigad.

2. Brief facts of the case are that in the instant cases the adjudicating authority partly rejecting rebate claims totally amounting to Rs. 60744/- on the ground that FOB value is less than the value shown in the ARE-1's because of addition of International Freight and Insurance in the assessable value which is not allowed under section 4 of the Central Excise Act, 1944. The rebate amount was restricted to the duty involved on FOB value considering the FOB value as transaction value.

3. Being aggrieved by the said Order-in-Original, applicant filed initially two appeals before appeal before Commissioner (Appeals), in time claiming interest on delayed payment of rebate claim. Applicant subsequently filed two more appeals against the same Order-in-Original pleading to grant partial rebate claim of Rs. 60741 which was rejected by Assistant Commissioner of Central Excise. Commissioner (Appeals) allowed the first two appeals filed in time, thereby allowing interest for delayed payment of rebate claims but dismissed other two appeals filed subsequently being time barred and non-maintainable.

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

4.1 It is a question of fact that the applicants, initially filed first appeal, within the normal limitation, against the Order-in-Original No., 783/10-11/AC (Rebate)/Raigad, dated 16-08-2010, claiming therein Interest on the delayed payment of rebate.

4.2 While filing the aforesaid appeal, against the Order-in-Original the applicants missed the point that the dealing clerk did not consider the claim for short payment of rebate to the tune of Rs. 60741/- on account of lower FOB value of export goods, taken by the original authority and sanctioned remaining rebate claim.

4.3 The dealing clerk missed the point that second appeal should have been filed within 60 days from the date of service of the Order-in-Original for claiming differential rebate and took for granted that the period of three months may be available for filing the said appeal and this was all due to ignorance.

4.4 The administrator should not take disadvantage of the ignorance of the exporter, when he has legitimately claimed the correct amount of rebate claim and at least in the interest of export the respondent should consider the condonation application of the applicant.

4.5 The judgment of the Hon'ble apex court of India in the case titled as Improvement trust, Ludhiana Vs. Ujagar Sing and others reported in 2010-TIOL-46-SC-LMT annexed hereto as Annexure-3 wherein the Hon'ble Apex court manifestly maintained that Generally as a normal rule delay should be condoned when the applicants would not have gained in any manner whatsoever by not filing the appeal within the prescribed limitation.

4.6 It is required to be noted that if at all the original authority has sanctioned rebate of Central Excise Duty paid on lower FOB value then in such a case while sanctioning rebate claim on lower FOB value the balance amount of Central Excise Duty arising on account of payment of Central Excise Duty by the applicants on higher assessable value should have been allowed as Cenvat credit by the original authority in the Cenvat credit account maintained by the applicants, under the Cenvat Credit Rules, 2004.

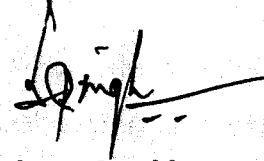
5. Personal hearing was scheduled in this case on 27-09-2013 & 12-03-2014. Nobody appeared for hearing on these dates on behalf of the applicant.

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

7. On perusal of records, Government observes that the first two appeals filed in time claiming interest were allowed by the Commissioner (Appeals). Applicant had not challenged rejection of part rebate claim of Rs. 60741/- in these appeals. The another two appeal filed subsequently were time barred on the one hand and not legally maintainable in view of first two appeals. The ignorance of law cannot be excuse for filing second set of appeals. As such two appeal filed subsequently were rightly dismissed by Commissioner (Appeals).

8. In view of above position, Government do not find any infirmity in the impugned Orders-in-Appeal and therefore upholds the same.

9. So, Ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Intas Pharmaceuticals Ltd.,
Plot No. 457 & 458, Village Matoda,
Taluka Sanand, Distt-Ahmedabad.

ATTESTED



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

Order No. 75-78/14-Cx dated 13-3-2014

Copy to:

1. The Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
2. The Commissioner (Appeals), Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
3. The Assistant Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)