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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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO.195/236-254/WZ/2018-RA/2046 Date of Issue: 03.12.2021

828-846
ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 01.12.2021
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 Leben Laboratories Pvt. Ltd.,
L-4, Phase - III, MIDC, Akola 444 104.
- Respondent : Commissioner of Central Goods & Service Tax, Nagpur-II,
Telanghedi Road, Civil Lines,
Nagpur - 440 001.
- Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
NGP/EXCUS/ 000/ APPL/ 074-092/ 18-19 dated
27.09.2018 passed by the Commissioner (Appeals), GST,
C. Excise & Customs, Nagpur.

ORDER

The subject Revision Applications have been filed by M/s Leben Laboratories Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. NGP/ EXCUS/ 000/ APPL/074-092 / 18-19 dated 27.09.2018 passed by the Commissioner (Appeals), GST, C. Excise & Customs, Nagpur. The said Order-in-Appeal dated 27.09.2018 decided appeals against 19 Orders-in-Original, tabulated below, passed by Deputy/Assistant Commissioner, GST and Central Excise, Division Akola, Nagpur.

Sr. No.	Order-in-Original No.	Date
1	50/REB/AMT/17-18	05.06.2017
2	51/REB/AMT/17-18	05.06.2017
3	52/REB/AMT/17-18	05.06.2017
4	54/REB/AMT/17-18	05.06.2017
5	56/REB/AMT/17-18	12.06.2017
6	57/REB/AMT/17-18	12.06.2017
7	58/REB/AMT/17-18	12.06.2017
8	59/REB/AMT/17-18	12.06.2017
9	60/REB/AMT/17-18	12.06.2017
10	61/REB/AMT/17-18	12.06.2017
11	62/REB/AMT/17-18	12.06.2017
12	63/REB/AMT/17-18	12.06.2017
13	64/REB/AMT/17-18	12.06.2017
14	65/REB/AMT/17-18	12.06.2017
15	66/REB/AMT/17-18	12.06.2017
16	67/REB/AMT/17-18	12.06.2017
17	68/REB/AMT/17-18	12.06.2017
18	69/REB/AMT/17-18	12.06.2017
19	70/REB/AMT/17-18	12.06.2017

2. Brief facts of the case are that the applicants are engaged in the manufacture of P & P medicines. They had filed 19 rebate claims with the original rebate sanctioning authority who had sanctioned part of it and rejected the rest. The original Adjudicating Authority found that value on which duty was paid included 'Commission' and he rejected the rebate claims to the extent of duty paid on Commission, which the Adjudicating Authority held was in excess to the duty payable. The applicant was allowed to take re-credit of the amount rejected, in their Cenvat credit account.

3. Aggrieved, the applicant preferred appeals against the said 19 Orders-in-Original before the Commissioner of Customs (Appeals), Nagpur resulting in the Order-in-Appeal dated 27.09.2018. The Commissioner (Appeals) found that all the 19 appeals were filed after a period of more than four months, which not only was beyond the period prescribed for filing appeal under Section 35 of the Central Excise Act, 1944 but was also beyond the period prescribed for condonation of delay by the Commissioner (Appeals). In view of the same the Commissioner (Appeals) refrained from going into the merits of the case and rejected the appeals as time barred.

4. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 28.02.2013 on the following grounds:-

- (a) They had failed to take re-credit of the amount rejected in their Cenvat Credit ledger and had thereby missed on the opportunity to carry forward the said sums as part of the excess credit carried forward in their excise returns for the month of June 2017 filed on 30.07.2018;
- (b) The Commissioner (Appeals) had not gone into the merits of the case and their appeals had been dismissed on the grounds that there was a delay of 121 to 128 days in filing the appeal which he was not empowered to condone;
- (c) In an identical case, where the appeals were filed in time, the Commissioner (Appeals) in his Order dated 27.09.2018, had decided the case in their favor';

- (d) Given the facts and circumstances of the case and the genuine confusion as regards alternative remedies with the advent of GST, the Appeals in question were filed beyond their prescribed due date; that the very fact that substantive benefit to them would be abrogated if the appeal was not restored was sufficient basis to condone the delay;
- (e) The Adjudicating Authority had disallowed a sum of Rs.7,54,455/- of the total rebate claim of Rs.85,63,024/- and that the grounds of the said disallowance, though not clarified in express terms, was on account of some commission forming part of the export value; that as a matter of procedure prescribed by notification no.19/2004 dated 06.09.2004, read with Rule 18 of the Central Excise Rules, the goods were cleared from their factory premises under Form ARE-1; that the value therein was confirmed and certified by the concerned Central Excise Officer; that the said procedure was laid out by the Board in its Supplementary Instructions at para 4.5 & 6.3; and that a reading of the said procedure made it clear that a value once adopted at the time of clearance of goods in Form ARE-1 could not be challenged later; that export with payment of Central Excise was a facility given to the exporter of goods so as to monetize the input credit and thereby release unwanted working capital blocked in the form of Cenvat Credit; that they were merely asking for refund of Excise duty paid on exports and that being the case, the disallowance of Rs.7,54.455/- on account of valuation issues are completely uncalled for; and that the case is a fit case covered under the provisions of Section 142 of the Central Goods and Service Tax Act, 2017, whereby any sum determined as refundable to the assessee was required to be refunded in cash since there was no re-credit facility available from 01.07.2017.

In light of the above submissions, they pleaded that the delay be condoned and that the rebate of Rs.7,54,455/- be allowed to them.

5. Personal hearing in the matter was granted to the applicant on 09.11.2021 and Shri Shrenik Shah, Chartered Accountant, appeared on

behalf of the applicant. He gave a written submission and stated that rejection of part of the rebate was incorrect as it was part of the FOB value. On the issue of appeals before Commissioner (Appeals) being time barred, he submitted that the same occurred due to the introduction of GST. The applicant in their written submissions made during the Personal Hearing, apart from reiterating the points already submitted, also stated that :-

(a) With the advent of GST regime on 01.07.2017 they were unaware of how to deal with the situation, as they had not taken re-credit of the rebate that was rejected and that there was no mechanism available for the same and that they were confused as to whether they could seek cash refund under the transitional provisions of Section 142 of the CGST Act, 2017;

(b) That they lost time in seeking legal advice; lack of clarity had led to delay in filing the appeals and that the rebate claims should be decided on merits.

6. Government has carefully gone through the relevant case records available in the case file, the written and oral submissions and also perused the impugned Orders-in-Original and the Order-in-Appeal dated 27.09.2018.

7. Government finds that the Commissioner (Appeals) had rejected the 19 appeals filed by the applicant, without going into the merits of the case, as there was a delay of more than four months in filing the said appeals and that such delay was beyond the period that could be condoned by the Appellate Authority. Government observes that it is not in dispute that there was a delay of 121 days to 128 days in filing the appeals before Commissioner (Appeals) covered by the present Revision Application, which was 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 upto 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 sub-section (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 upto 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 judgment of the Apex Court leaves no doubt that in the present case, the Commissioner (Appeal) did not have the power to condone the quantum of delay on the part of the applicant in filing the rebate claims. Government finds that the decision of the Commissioner (Appeals) to reject the 19 appeals on the grounds of them being time barred is proper and legal. Government refrains from going into the merits of the case, as the appeals by the applicant before the Commissioner (Appeals) have been found to be time barred.

8. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. NGP/ EXCUS/ 000/ APPL/074-092 / 18-19 dated 27.09.2018 passed by the Commissioner (Appeals), GST, C. Excise & Customs, Nagpur.

9. The Revision Applications are dismissed.

Shrawan
01/12/21

(SHRAWAN KUMAR)

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

828-846
ORDER No. /2021-CX (WZ) /ASRA/Mumbai dated 01.12.2021

To,

M/s Leben Laboratories Pvt. Ltd.,
L-4, Phase - III, MIDC, Akola 444 104.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Nagpur-II, Telangkhedi Road, Civil Lines, Nagpur - 440 001.
2. The Commissioner (Appeals), GST, C. Excise & Customs, Nagpur, 2nd floor, Room No.221, Telangkhedi Road, Civil Lines, Nagpur - 440 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.