

**SPEED POST**



F.No. 195/71/SZ/2019-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..12/01/23

Order No. 31/2023-CX dated 12-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal No. VIZ-EXCUS-001-APP-187-18-19 dated 31.10.2018, passed by the Commissioner Central Tax and Customs (Appeals), Visakhapatnam.

Applicant : M/s Vasudha Pharma Chem Ltd., Vishakapatnam

Respondent : The Principal Commissioner of CGST & Central Excise, Visakhapatnam.

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**ORDER**

A Revision Application no. 195/71/SZ/2019-RA dated 18.03.2019 has been filed by M/s Vasudha Pharma Chem Ltd., Vishakapatnam, (hereinafter referred to as the Applicant), against the Order-in-Appeal No. VIZ-EXCUS-001-APP-187-18-19 dated 31.10.2018, passed by the Commissioner Central Tax and Customs (Appeals), Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicants herein against the Order-in-Original No. 177/2017(R)/DRG/South CGST Division dated 18.09.2017, passed by the Assistant Commissioner, Visakhapatnam South Central CGST Division, as barred by limitation.

2. Briefly stated, the Applicants herein filed 5 rebate claims, on 24.06.2017, under Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE (NT) dated 06.09.2004, for a total amount of Rs. 1,51,31,503/-. The Original Authority, vide the Order-in-Original dated 18.09.2017, sanctioned an amount of Rs. 1,47,67,831/- in cash and allowed balance amount of Rs. 3,63,671/- by way of recredit in the Applicant's CENVAT credit account in the manner it had been initially paid. Aggrieved by the recredit of the amount instead of it being paid in cash, the Applicants filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) observed that the appeal is delayed by a period of 11 months, which cannot be condoned in terms of Section 35 of the Central Excise Act, 1944 and, accordingly, rejected the same as time barred.

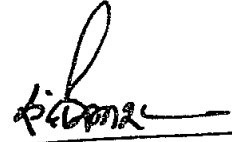
3. The Revision Application has been filed, mainly, on the grounds that the rebate was sanctioned after the implementation of GST w.e.f. 01/07/2017; that after 01.07.2017, in terms of sub-section (3) of Section 142 of the CGST Act, 2017, irrespective of the position whether duty was paid in cash or CENVAT credit, the refund had to be paid in cash only; that the applicants had taken re-credit of the tax credit amount allowed by the Original Authority, on 30.11.2017, but the GST authorities informed that the said amount cannot be availed; that, therefore, they approached the Original Authority to redress their grievances who asked them to file an appeal before the Commissioner (Appeals); that the claim of the Applicant could not have been denied merely on the basis of delay by the Commissioner (Appeals).

4. Personal hearing, in virtual mode, was held on 18.01.2023. Shri D. Vishwanathan, Consultant appeared for the Applicant and reiterated the contents of the RA. Upon being asked about delay in filing appeal before the Commissioner (Appeals), Shri Vishwanathan submitted that their just claim should not be denied due to delay. No one appeared for the Respondent department. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is not denied by the Applicants herein that the appeal was filed with a delay as recorded by the Commissioner (Appeals). The Government observes that in terms of sub-section (1) of Section 35 of the Central Excise Act, 1944, an appeal may be preferred

before the Commissioner (Appeals) within a period of 60 days from the date of communication of the order appealed against. Further, as per proviso to said sub-section (1), 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 60 days, allow it to be presented within a further period of 30 days. Therefore, in terms of Section 35, an appeal can be filed before the Commissioner (Appeals) within a total period of 90 days, including the condonable period of 30 days. As already brought out hereinabove, it is an admitted fact that the appeal was filed beyond the condonable period of 30 days. It is settled by the judgments of Hon'ble Supreme Court in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} and Amchong Tea Estate vs Union of India {2010 (257) ELT 3 (SC)} that the Commissioner (Appeals) does not have powers to condone the delay beyond the statutorily prescribed condonable period. Therefore, the Government does not find any infirmity in the Order-in-Appeal impugned herein.

6 In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

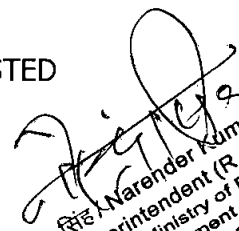
M/s Vasudha Pharma Chem Ltd.,  
Unit-II, Plot No. 79,  
JNP City Parawada,  
Vishakapatnam  
Andhra Pradesh – 531 011.

G.O.I. Order No. 31 /23-CX dated 18-01-2023

Copy to: -

1. The Principal Commissioner of CGST & Service Tax, Visakhapatnam, GST Bhawan, Port Area, Visakhapatnam – 530 035.
2. The Commissioner (Appeals), Central Tax & Customs, 4<sup>th</sup> Floor, Custom House, Port Area, Visakhapatnam – 530 035.
3. M/s G.R. Kumar & CO. LLP, CA, 9, Merry Life Apartments, Doctor's Colony, Peda Waltair, Vishakhapatnam – 530 017.
4. PS to AS (RA)
5. Guard File.
6. Spare Copy
7. Notice Board

ATTESTED

  
नरेंद्र कुमार सिंह / Narender Kumar Singh  
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