

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

Appeal No. E/ 2061/2000-NB(SM) BENCH NB(SM)

Dated : 17-12-2001

CEGAT
NEW DELHI
To,

CCE Chandigarh

In the matter of :

CCE Chandigarh

Appellant

vs.

M/s Pfizer Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/74/2001/NB(SM)
Dated : 21-12-2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

M/s Pfizer Ltd.,
178, Phase-I, Indl. Area,
Chandigarh

Asstt. Registrar
NB(SM)

1. CCE/CE/(Appeal) Chandigarh
2. Chief Commissioner of Central Excise/Customs New Delhi
3. Adv. / Consult. Shri J. P. Kaushik, Adv.
4. 40 Respondent.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. E/2061/2000-NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

652/CE/CHD/2000 DATED 21.3.2000

PASSED BY Commissioner (Appeals), Central
Excise, Chandigarh

Date of decision 21.12.2000

Commissioner of Central Excise, Chandigarh APPELLANT (S)

Represented by Sh./Smt. S.C. Puskaran, DR

VERSUS

M/s. Pfizer Ltd. RESPONDENT (S)

Represented by Sh./Smt. J.P. Kaushik, Advocate

CORAM:

Shri P.S. Bajaj

Member (Judicial)

To be referred to the Reporter or not?

FINAL

ORDER NO. A/74/OI/NBGS/W/

Per P.S. Bajaj

This appeal has been preferred by the Revenue against the impugned Order-in-Appeal dated 21.3.2000 passed by Commissioner (Appeals) vide which hea had reversed the Order-in-Original dated 28.5.99 of the Deputy Commissioner disallowing the

modvat credit to the tune of Rs.96,541/- by not condoning the delay of 76 days in filing the declaration under Rule 57 T of the Central Excise.

2. The facts of this case may briefly be stated as as under:

The respondents are engaged in manufacture of bulk drugs. They filed declaration under Rule 57 T before the Assistant Commissioner on 19.12.97 with a prayer to condone the delay of period of 76 days. The Assistant Commissioner however, refused to condone the delay and as a result thereof, the respondents were served with a show cause notice dated 23.6.98 to show cause as to why the amount of Rs.96,541/- of which they had wrongly taken the credit, be not recovered from them, under Rule 57-U of the Rules, along with interest. After getting their reply to that show cause notice wherein they questioned the correctness of the demand, the Deputy Commissioner confirmed the demand of Rs.96,541/- under Rule 57 U of the Rules on them through Order-in-original dated 28.5.99.

3. Feeling dissatisfied with the above said order of the Deputy Commissioner, the respondents preferred the appeal before the Commissioner (Appeals) who through impugned order in appeal reversed the same and allowed the credit of disputed amount ~~appeal~~ by condoning the delay of

76 days.

4. The Revenue has come up in appeal before the Tribunal against the impugned order-in-appeal of the Commissioner (Appeals).

5. I have heard Shri S.C.Pusakaran, DR for the Revenue and Shri J.P. Kaushik, Advocate for the assessee.

6. The main ground on which the impugned order has been challenged by the Revenue in the grounds of appeal, is that the delay in filing the modvat declaration under Rule 57 T of the Rules could be condoned only by the jurisdictional Assistant Commissioner and not by the Commissioner (Appeals). The Commissioner (Appeals) could only remand the matter for readjudication if he was not satisfied with the order of the Assistant Commissioner. But in my view, this ground is wholly misconceived and not liable to be accepted. No doubt the initial power for condoning the delay in filing the declaraton under Rule 57 T of the Rules for modvat credit, vested with the Assistant Commissioner, under rule 57 G of the Rules, but the order passed by the Assistant Commissioner disallowing the condonation of delay,

could be appealed against before the Commissioner (Appeals) under Section 35 of the Act by the aggrieved party. The mere perusal of the subsequent Section 35 A which lays down procedure in appeal, shows that the Commissioner has got ample power to confirm, modify or alter the order appealed against before him. Even the Apex Court in 1999 (98) ELT 200 SC has observed that the appellate authority has all the powers which the original authority may have in deciding the question before it subject to the statutory limitations. Therefore, the Commissioner (Appeals) is fully competent to reverse the Order-in-Original of the jurisdictional/adjudicational authority and condone the delay in filing the modvat declaration by the ~~respondents~~^{appellants}. In the instant case, the Commissioner (Appeals) had exercised this power and condoned the delay when the order -in-original of the adjudicational authority (Deputy Commissioner) who confirmed the demand by disallowing the condonation of delay in filing the declaration under Rule 57 T, was appealed against before ~~hearing~~^{by him by} the respondents. Therefore, the impugned order in appeal passed by the Commissioner (Appeals) cannot be said to be without jurisdiction.

7. On merits, the impugned order of the Commissioner (Appeals) allowing the condonation of

delay of 76 days to the respondents in filing the declaration under Rule 57 T has not been questioned before him at all. The Commissioner (Appeals) had given valid reasons for condoning the delay and for reversing the Order-in-Original of the Deputy Commissioner. Therefore the impugned order in appeal passed by the Commissioner (Appeals) is perfectly valid and needs no interference.

8. In an exactly similar case 'reported' in 2000 (37) RLT 664, the Tribunal had earlier taken the view that the Commissioner (Appeals) has got powers to condone the delay in filing the declaration under Rule 57 T by the assessee. The ratio of the law laid down in that case squarely covers the case of the respondents.

9. In view of the discussion above, there is no merit in the appeal of the Revenue and the same is ordered to be dismissed.

(Pronounced in the Court)

(P.S. Bajaj)
Member(Judicial)

DT: 21.12.2000
ss