IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/36/2011

[Arising out of Order-in-Appeal No: 111/Mumbai-III/2010 dated 29th October 2010 of Commissioner of Customs (Appeals), Mumbai Zone – III.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Taksal Pharma P Ltd … ***Appellant***

versus

Commissioner of Customs
ACC, Mumbai ***…Respondent***

<u>*Appearance*</u>*:*

Shri Bharat Raichandani, Advocate for appellant

Shri MK Mall, Assistant Commissioner (AR) and Shri Bhushan Kamble, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 20/12/2018
Date of decision: 20/12/2018

ORDER NO: A/88299 / 2018

Per: C J Mathew

The core of the dispute in this appeal of M/s Taksal Pharma P Ltd against order-in-appeal no. 111/Mumbai-III/2010 dated 29th October 2010 of Commissioner of Customs (Appeals), Mumbai Zone-III is the denial of refund of ₹ 47,70,398, paid as special additional duty on imports effected against bills of entry no. 431767/28.01.08, 433259/29.01.08 and 435825/30.01.08, claimed in application dated 31st January 2009. The original authority ordered rejection on the ground that the prescribed deadline of one year from the date of payment of duty had not been complied with; this was upheld by the first appellate authority. The claim was preferred under notification no. 102/2007-Cus dated 14th of September 2007 as amended by notification no. 93/2008-Cus dated 1st August 2008.

2. None appeared for the appellant. We have heard Learned

Authorised Representative.

3. The sole ground in the appeal is that their plea for condonation of the admitted delay of two days beyond the period stipulated in the notification *supra* was not acceded to by the original, as well as first appellate, authority even though the sanctioning authority was impliedly vested with powers to do so. It is further claimed that, but for this delay, no other reason for ineligibility of the refund is on record.

4. Though the appellant was, doubtlessly, entitled to the exemption from special additional duty of customs as a trader in the imported goods that, on subsequent sale, was liable to appropriate tax under the relevant law, the mechanism of escapement requires prior payment and refund thereafter on submission of evidence of discharge of such tax liability. It is well settled that any refund to be granted by a proper officer of customs should necessarily comply with the prescriptions enshrined in section 27 of Customs Act, 1962. It is in pursuance of this legal requirement that the amendment of August 2008 was incorporated in the scheme for exemption embodied in notification no. 102/2007-Cus dated 14th of September 2007. There is no provision, notwithstanding the submission of the appellant that subjective satisfaction articulated in the notification does so, for condonation of delay beyond the period specified therein.

5. In the light of the statutory stipulation, there is no flaw in the

upholding of the denial by the first appellate authority. We find no reasons to interfere with that. Accordingly, the appeal is dismissed.

(Pronounced in Court)

(Ajay Sharma)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

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