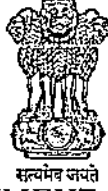


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सत्यमेव जयते  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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.198/94/2013-RA / 498

Date of Issue: 28/06/2018

ORDER NO. 195 /2018-CX (WZ)/ASRA/MUMBAI DATED 28.05.2018  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Customs & Service Tax,  
Surat-II.

Respondent : M/s BASF India Ltd., Ankaleshwar.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. CCEA-SRT-  
II/SSP-36/2013-14 u/s 35A(3) (Final Order) dated  
27.05.2013 passed by the Commissioner (Appeals) Central  
Excise, Customs & Service Tax, Surat-II.



## ORDER

This revision application is filed by the Commissioner of Central Excise, Customs & Service Tax, Surat-II (hereinafter referred to as "the applicant") against the Order-in-Appeal No. CCEA-SRT-II/SSP-36/2013-14 u/s 35 A (3) (Final Order) dated 27.05.2013 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II.

2. The issue in brief is that M/s. BASF India Ltd. (formerly known as M/s Diamond Dye Chem. Ltd.) (hereinafter referred to as "the respondents") are engaged in the manufacture of Optica Whitening Agent (Tinopal DMA-X 20Kg & Tinopol UP LIQ 1,000 Kg) under chapter sub-heading No. 3204 2010 of the Central Excise Tariff Act, 1985.

3. The respondents during the period June 2011 made the exports under claim for rebate in terms of Rule 18 of the Central Excise Rules, 2002: The respondents exported optica whitening agent under the cover of shipping bills. The respondents exported 80,000 Kgs of Optica whitening agent during the period June 2011 on payment of excise duty under claim for rebate. The respondents submitted their claim for rebate (along with other documents) amounting to Rs.6,39,714/- before the Assistant Commissioner of Central Excise, Division, Ankleshwar.

4. The rebate claims filed by the respondents were processed and rebate amount of Rs.6,21,957/- was sanctioned in cash and the differential amount of Rs.17,757 was allowed as credit in Cenvat Credit Account, by the Assistant Commissioner, Central Excise and Customs, Division-II, Ankleshwar vide Order-in-Original No.1654 to 1658/SRT-II/Ank-II/REBATE/11-12 dated 8.12.2011.

5. The Commissioner of Central Excise & Customs, Surat-II , the applicant, reviewed the aforesaid Order-in-Original dated 8.12.2011 and directed the Assistant Commissioner vide letter dated 30.3.2012 to file an appeal against the aforesaid Order-in-Original dated 8.12.2011.

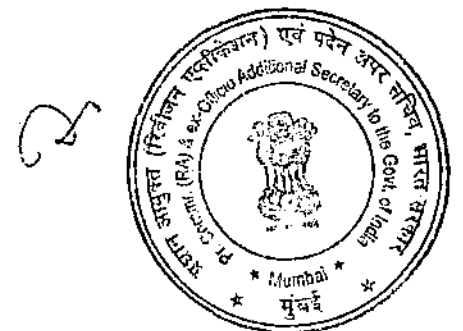




Original dated 8.12.2011 was inadvertently mentioned as 16.12.2011 (in EA-2) instead of 4.1.2012. The department further contented that the Order-in-Original along with the rebate claims was forwarded for review on 3.1.2012 and was actually received by HQ (review section) on 4.1.2012. In this regard, the department submitted the attested copy of the letter dated 3.1.2012 issued by the Divisional Superintendent (Rebate). Accordingly, the review order which was passed on 30.3.2012 was within the prescribed time limit. Further, the appeal filed on 4.4.2012 was also well within the time limit of one month from the date of authorization letter i.e. 30.3.2012. Further, the applicant also pleaded that in pursuance of Section 35 E(4) of Central Excise Act, 1944, the authorized adjudicating authority had to file review application to the Commissioner (Appeals), Central Excise & Customs, Surat-II within a period of One month from the authorization dated 30.03.2012. Therefore, last date for filing appeal as per Section 35 E(4) of the Central Excise Act,1944 was 29.04.2012 (i.e. one month from the authorization dated 30.03.2012). Therefore it can be seen that subject appeal u/s 35E of the Central Excise Act,1944 was filed on 04.04.2012 was within time limit.

9. Accordingly, the applicant vide present revision application prayed for setting aside the impugned Order- in -Appeal dated 27.05.2013 and the Corrigendum bearing F.No. V-2(8)090/SRT-II/Ank-II/2012-EA-2 dated 05.06.2013 in this regard, issued by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

10. A personal hearing in the case was held on 29.01.2018. None was present for the applicant. Ms. Anjali Hirawat, Advocate, appeared on behalf of the respondents. The advocate for the respondents filed a written brief along with the copy of relied upon material and case laws. In view of the same it was pleaded that the OIA be upheld and instant Revision Application be dismissed.



11. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

12. On perusal of records, Government observes that Commissioner (Appeals) on the basis of Form EA-2 signed by the Assistant Commissioner, Central Excise & Customs, Div.II, Ankleshwar, *observed* that the date of communication of the Order-in-Original dated 8.12.2011, against which subject Review Application u/s 35E is filed, is shown as 16.12.2011. Accordingly, Commissioner (Appeals) has come to the conclusion that the Authorization issued by the Commissioner of Central Excise & Customs, Surat-II u/s 35E(2), on 30.03.2012 is beyond the time limit of three months prescribed for making review order u/s 35E(2) from the date of communication of the decision or the order of the Adjudicating Authority. Therefore, Commissioner (Appeals) in his impugned order has held that subject review application, as filed u/s 35E of Central Excise Act, 1944 is time barred.

13. The applicant, in their grounds for appeal in the instant revision application has contended that the date of communication of Order-in-Original dated 8.12.2011 was inadvertently mentioned as 16.12.2011 (in EA-2) instead of 4.1.2012. The department further contented that the Order-in-Original along with the rebate claims was forwarded for review on 3.1.2012 and was actually received by HQ (review section) on 4.1.2012. In this regard, the department submitted the attested copy of the letter dated 3.1.2012 issued by the Divisional Superintendent (Rebate). Accordingly, it is argued by the applicant that the review order which was passed on 30.3.2012 was within the prescribed time limit. Further, the appeal filed on 4.4.2012 was also well within the time limit of one month from the date of authorization letter i.e. 30.3.2012.

14. In view of the foregoing, the Government remands the matter to the Commissioner (Appeals), for examining the above aspect and to re-decide the issue of limitation on the basis of the same. The Commissioner



may also give hearing to the respondents. If the contention of the applicant department is found to be acceptable then the Commissioner (Appeals) may proceed to decide the appeal on merits itself expeditiously and in accordance with law.

15. The impugned order is set aside and the matter remanded in the above terms. The revision application, thus disposed of in terms of the above.

16. So ordered.

*(Handwritten Signature)*  
28/5/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 175/2018-CX (WZ)/ASRA/Mumbai DATED 28.5.2018.

**True Copy Attested**

To,  
Commissioner of Central Goods and Service Tax,  
Vadodara-II,  
GST Bhavan, Subhanpura,  
Vadodara-390 023.

*(Handwritten Signature)*  
28/5/18  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A.C)

Copy to:

1. M/s BASF India Ltd. Plot No. 6216, GIDC, Ankleshwar-393002.
2. The Commissioner of Central Goods and Service Tax, (Appeals), Central Excise Building, 1<sup>st</sup> Floor Annex, Race Course Circle, Vadodara 390007.
3. The Deputy / Assistant Commissioner, Central Goods & Service Tax, Division-VIII [Ankleshwar], GST Bhavan, Plot No.C/4/9, Behind Roshan Cinema, GIDC, Ankleshwar-393002.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

