

REGISTERED SPEED POST



**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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005**

F. NO. 195/1020/13-RA | 2436 Date of Issue: 27/12/2018

ORDER NO. 427 /2018-CX (WZ) /ASRA/Mumbai DATED  
30.11.2018 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** : M/s. Chempi Fine Chemicals, Mumbai.

**Respondent** : Deputy Commissioner, Central Excise, (Rebate) Raigad.

**Subject** : Revision Application filed, under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal  
No. SDK/207/RGD/2013-14 dated 09.10.2013 passed  
by the Commissioner Central Excise (Appeals), Mumbai-  
III.



## ORDER

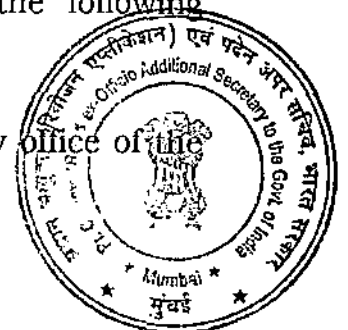
This Revision Application has been filed by M/s Chempi Fine Chemicals (herein after referred to as "the applicant") against Order in Appeal No. No. SDK/207/RGD/2013-14 dated 09.10.2013 passed by the Commissioner Central Excise (Appeals), Mumbai -III

2. The brief facts of the case that the applicant had filed 11 rebate claims for Rs.2,37,931/- (Rupees Two Lakh Thirty Seven Thousand Nine Hundred and Thirty One only) under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004CE(NT) dated 06.09.2004 for the duty paid on goods exported. On scrutiny of the documents the original adjudicating authority observed that the goods had been removed from the factory of M/s Pharmaceutical Products of India in the name of M/s Apurva Bio Pharma Inc. who sold the goods to the applicant. Further the goods had been exported without the central excise supervision and no documentary proof regarding general or special permission from Department was submitted. As such the original adjudicating authority rejected the entire rebate claim on the grounds that the applicant had contravened the proviso (2) (a) and 3(a) (iii) of Notification No. 19/2004-CE(NT) dated 06.09.2004.

3. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals), who vide impugned Order in Appeal No. SDK/207/RGD/2013-14 dated 09.10.2013 dismissed the appeal filed by the applicant and upheld the Order in Original No. 749/12-13/DC(Rebate) Raigad dated 24.06.2013 passed by the original Adjudicating Authority.

4. Being aggrieved with the aforesaid Order-in-Appeal, the applicant has filed the present Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds that :

- 4.1 they are not happy with the decision taken by office of the Commissioner of Central Excise (Appeals),



- 4.2 their name is not mentioned in ARE-1 and it is issued in the name of Apurva Boipharma Inc. and Apurva issued no objection certificate for claiming rebate to them as they are the exporter of the consignment and the Commercial Invoice is issued in their name,
- 4.3 they are the exporters of the consignment on the basis of the materials received directly from the factory to Docks for exportation without changing labels and packing,
- 4.4 they request to consider their case favourably and allow them rebate.
5. A Personal hearing fixed in the matter was attended by Mr. P.S. menon, Export Manger and Shri Chetan Parekh, Purchase Manager on behalf of the applicant company. They reiterated the submissions filed in Revision Application and pleaded that in view of the submissions made the Revision Application be allowed and Order in Appeal be set aside.
6. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes that while dismissing the appeal filed by the applicant, the Commissioner (Appeals) in his impugned Order observed that :

*From perusal of the ARE 1's and the relevant invoices it is seen that the appellants have contravened proviso (2) and 3a(iii) of Notification No.19/2004(14T) dated 06.09.2004 in as much as the goods have been removed from the factory of M/s Pharmaceutical Products of India, in the name of M/s Apurva Bio pharma inc. who have sold the goods to the appellants i.e the exporter and the claimant. Further, they have not produced any documents regarding permission from department as per Board's Circular No.294/10/97,CX dated 30.01.97. The appellant should have followed the conditions laid down in the said Notification and Circular when a condition is imposed and is of substantial nature it needs to be followed rather than deviating from the same.*



8. Government observes that para 3(a)(iii) of Notification No. 19/2004-C.E. (N.T.) requires sealing of export goods at the place of dispatch by the Central Excise Officer, if the goods are exported by the Merchant Exporter, who do not procure goods directly from factory or warehouse. In the instant case, the applicant who is a Merchant Exporter had not procured goods directly from factory or warehouse but from M/s Apurva Bio Pharma who in turn had procured the goods from the factory of M/e Pharmaceutical Products of India. Government, thus, observes that as the applicant merchant exporter had not procured goods directly from factory but through intermediary, i.e M/s Apurva Bio Pharma, there was a requirement of sealing by Central Excise Officer in respect of these exports under para 3(a)(iii) of the notification 19/2004-C.E. (N.T.) .

9. Government also observes that in this case, goods are not exported directly from factory of manufacture as required under Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Further, C.B.E. & C. vide Circular No. 294/10/97-CX, dated 30-1-1997 has relaxed the condition of direct export of goods from factory of manufacturer subject to the condition that procedure prescribed in the said circular is followed. As per said circular, the exporter desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from factory; stored outside the place of manufacture should make an application to the Superintendent of Central Excise in-charge of Range under whose jurisdiction such goods are stored. On receipt of such application the particulars of goods lying stored should be verified with particulars given in application and ARE-1 form. If the Central Excise Officer deputed for verification of goods for export is satisfied about the identity of goods, its duty paid character and all other particulars given by exporter, he will endorse such form and permit export. The detailed procedure is given in Para 8.1 to 8.6 of said circular.



10. Government further observes that in the instant case, the Jurisdictional Central Excise authorities were not informed about the said export and the goods were cleared for export under self sealing procedure without supervision/examination by Central Excise Officers. In such a situation, it cannot be proved that the same duty paid goods cleared from factory have actually been exported. As such Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 also stands violated. Since the goods were not exported directly from factory or warehouse, the procedure laid down in said Circular was required to be followed for becoming eligible to claim rebate duty under Rule 18 of Central Excise Rules, 2002. Moreover, Government observes that the applicant in their Revision Application have also mentioned that their name is not mentioned in ARE-1, thus indicating that no proper documents were made nor the required procedure was followed by the applicant. In view of above, Government holds that the rebate claims are rightly held as inadmissible to the applicant.

11. In the circumstances discussed above, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

12. The Revision Application is dismissed being devoid of merit.

13. So, ordered.

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 427 /2018-CX (WZ) /ASRA/Mumbai Dated 30.11.2018.

To,  
M/s. Chempi Fine Chemicals,  
Unit No. 203/234, Anandraj Indl. Estate  
LBS Marg, Sonapur Lane,  
Mumbai 400 078.



Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate, 1st Floor, CGO Complex, Belapur, Navi Mumbai, 400 614.
2. The Commssioner of GST & CX, (Appeals) Raigad, 5thFloor, CGO Complex, Belapur, Navi Mumbai, 400 614.
3. The Deputy / Assistant Commissioner(Rebate) , GST & CX, Belapur Commissionerate, CGO Complex, Belapur, Navi Mumbai, 400 614.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

