

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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005**

F. NO. 195/227/13-RA / 4861

Date of Issue: 04.11.19

ORDER NO. 44/2019-CX (WZ) /ASRA/Mumbai DATED 30.09.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Alpha Chemie
30/Saptagiri, Bharat Tirtha Society,
Sion-Trombay Road, Chembur,
Mumbai - 400 071.

Respondent : Commissioner of Central Excise, Surat- II.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. BC/402/RGD(R)/2012-13 dated 27.11.2012
passed by the Commissioner of Central Excise (Appeals)
Mumbai-III.

ORDER

This Revision Application has been filed by M/s Alpha Chemie, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/402/RGD(R)/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant are engaged in manufacturing and exporting of finished excisable goods viz. "Lead Octoate 36%" falling under Chapter Sub-heading 32110000 of the Central Excise Tariff Act, 1985. The applicant had cleared the above mentioned goods for export under ARE-1 No. 13 dated 15.05.2009 on payment of applicable central excise duty of Rs. 1,63,647/- (Rupees One Lakh Sixty Three Thousand Six Hundred Forty Seven Only) under claim for rebate in terms of Rule 18 of the Central Excise Rules, 2002. The goods were physically exported / shipped on 21.05.2009.

3. The rebate sanctioning authority while scrutinizing the said rebate claims observed that the original & duplicate copies of ARE-I were not filed by the applicant. It is mentioned by the applicant that the same were lost in transit for which police complaint was lodged. Further, the applicant had submitted copies of original and duplicate ARE-1s duly certified by the Custom Officer. The rebate sanctioning authority vide order in original No. —1003 /11-12 dated 25.06.2012 rejected the rebate claim on the grounds that the applicant did not file original and duplicate copies of the ARE-1 as required under the provisions Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004- CE(NT) dated 06.09.2004.

4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III. The Commissioner (Appeals) observed that the applicant had received the order in original on 15.07.2012 and the appeal against the same was filed on 18.09.2012. In terms of Section 35 of the Central Excise Act, 1944, the applicant needs to file appeal within 60 days of receipt of the order i.e. before 14.09.2012 whereas the applicant filed appeal on 18.09.2012. The Section 35 of Central

Excise Act, 1944 provides that Commissioner (Appeals) may condone delay by another 30 days if he is satisfied with the reasons put forward by the applicant. However, the applicant has neither filed any condonation application for delay in filing appeal nor prayed to consider the late filing during personal hearing. As such the Commissioner (Appeals) rejected the appeal vide order in appeal No. BC/402/RGD(R)/2012-13 dated 22.11.2012 on the grounds of being hit by time limitation.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that the Commissioner (Appeals) had rejected the appeal solely on the ground of being time barred and that too for 4 days. The applicant submitted that during the relevant period of time, the authorized signatory of the applicant was unwell and was not able to sign and submit the Appeal in time. The Commissioner (Appeals) should have condoned the delay sumoto and decided the case on merit.

6. A Personal hearing held in this Revision Application was attended by Shri D.H. Nadkarni, Advocate and Shri V.S. Kotian, Representative of the applicant on 27.08.2019.. They reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and Order in Appeal be set aside.

7. 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.

8. Government observes that as per Section 35(1) of the Central Excise Act, an appeal before Commissioner (Appeals) has to be filed within 60 days from the date of communication of the order of the adjudicating authority. This period of 60 days can be extended by the Commissioner (Appeals) by 30 days. In the instant case, the Commissioner (Appeals) has dismissed the appeal on the ground that the appeal has been filed beyond 60 days of the adjudication order. In the instant case, there is a delay of only 4 days which is condonable in terms of the provisions of Section 35(1) of the Central Excise Act. Government also notes that the applicant has submitted that

the authorized signatory of the applicant was not medically fit to sign the documents and hence there was delay in filing the appeal. In these circumstances, the Government condones the delay of 4 days in filing the appeal before the Commissioner (Appeals). With these terms the impugned order in appeal is set aside and the matter is remanded back to the Commissioner (Appeals) to decide on its own merit.

9. The appeal is disposed of in the above terms.

10. So, ordered.



(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. MH/2019-CX (WZ) /ASRA/Mumbai DATED

30.09.2019

To,
M/s Alpha Chemie
30/Saptagiri, Bharat Tirtha Society,
Sion-Trombay Road, Chembur,
Mumbai - 400 071.

Copy to: -----

1. The Commissioner of CGST & CX, Belapur Commissionerate, 1st floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
2. The Commissioner of CGST (Appeals), Raigad, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai - 400 614.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX, Raigad.
4. Shri D.H. Nadkarni, Advocate, 12-14, Dr. Sunderlal B. Marg, (Goa Street), Nest to Rex Chambers, Ballard Estate, Mumbai - 400 038.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.