

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(56)98/Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-138-16-17

दिनांक Date : 27.10.2016 जारी करने की तारीख Date of Issue 9/11/16

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सूचित

Arising out of Order-in-Original: 117 to 119/REB/CEX/APB/2016 Date: 27.01.2016
Issued by: Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Sidwin Fabric Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside
India of on excisable material used in the manufacture of the goods which are exported to any
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

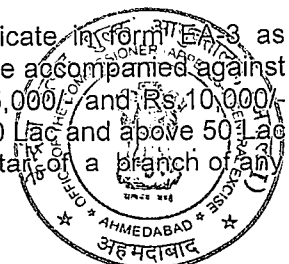
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

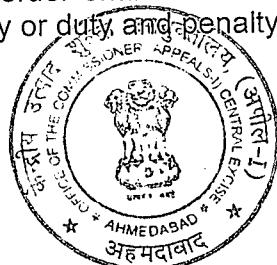
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Sidwin Fabric Pvt Ltd., Survey No.898, At-Dhundhar, Gambhoi-Harsol Road, P O Gambhol, NH-8, Ta- Himmatnagar, Dist. Sabarkantha (hereinafter referred to as "the appellant") against Order-in-Original No.117 to 119/Reb/CEx/APB/2016 dated 27.01.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

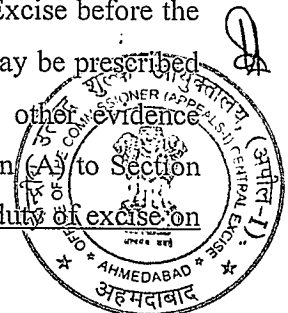
2. The appellant had filed rebate claims for Rs.3,33,390/- under the provisions of Rule 18 of Central Excise Rules, 2002 (CER-2002) read with notification No.19/2004-CE (NT) dated 06.09.2004 in respect of goods exported vide ARE-1 No. 07/01.05.2014, 15/06.06.2014 and 19/25.06.2014. A query memo dated 27.08.2015 was issued to the appellant which also proposed rejection of the said claim as time barred under the provisions of Section 11 B of the Central Excise Act, 1944 (CEA). The said rebate claim was further rejected vide the impugned order as time barred under the provisions of Section 11 B of CEA.

3. Being aggrieved, the appellant has filed the instant appeal *inter alia* stating that no show cause notice was issued by the adjudicating authority before adjudication of the case; that only query memo was issued for rejection the rebate claim. The appellant has submitted that as per Board's Circular No.29/2006-Cus dated 27.12.2006, Bill of export needs not to be filed when the assessee not claiming export benefit. The cited various case laws in support their argument.

4. Personal hearing in the matter was held on 19.10.2016. Shri M.H.Ravel, Consultant appeared for the same on behalf of the appellant and reiterated the submissions made in the grounds of appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum. In the instant case, I observe that the adjudicating authority has rejected the rebate claim amounting to Rs. Rs.3,33,390/-in respect of goods exported vide ARE-1 No. 07/01.05.2014, 15/06.06.2014 and 19/25.06.2014 under the provisions of Section 11B of CEA as time barred. I observe, however, that the appellant has not made any submissions towards rejection of appeal under Section 11 B of CEA. Therefore, the involved in the matter is relating to time limit of filing rebate claim under the provisions of Rule 18 of CER-2002 read with Notification no.19/2004-CE (NT) dated 06.09.2004.

7. Section 11B stipulates that any person claiming refund of any duty of excise and interest may make an application for refund to the Assistant Commissioner of Central Excise, or as the case may be, to the Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and that application shall be accompanied by such documentary or other evidence establishing, inter alia, the duty paid character of the goods. Explanation (A) to Section 11B specifically provides that the expression 'refund' includes rebate of duty of excise on



excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Since the statutory provision for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of limitation prescribed in Section 11B. Explanation (B) defines the expression 'relevant date which is as under:

- (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or
- (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
- (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India

8. In the instant case, I observe that the appellant had exported goods by sea and as per clause (B) (a) (i) referred to above, the appellant is required to file the rebate claim within one year from the date of export. In the instant case, the details of rebate claim filed by the appellant is as under

S No	ARE-1 No. & date	Date of export	Date of rebate claim filed
1	19/25.06.2014	26.06.2014	03.07.2015
2	7/01.105.2014	12.05.2014	03.07.2015
3	15/06.06.2014	09.06.2014	03.07.2014'

From the above details, I observe that the appellant had filed by the rebate claim in question after expiry of one year period from the date of export. Therefore, I observe that the adjudicating authority has justified in coming to the conclusion that the appellant had filed the rebate beyond the period of one year from the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law.

9. Further, I observe that the Government of India in the case of M/s Indo Rama Textiles Ltd, reported at 2015 (330) ELT 807- GOI held that for filing rebate claim under Rule 18, it is subject to compliance of provisions of Section 11B CEA as refund includes rebate as per Explanation (a) thereof. The relevant para is reproduced below:

"9.2 As per Explanation (a) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The Explanation 'A' of Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per Explanation B(a)(1) of Section 11B, the relevant date for filing rebate claim means :-

- "(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
- (i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or



There is no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

In view of above, Government observes that the date of export as stated above for the purpose of reckoning time limit for filing rebate claim under Section 11B of Central Excise Act, 1944 is to be treated as date of export for the purpose of deciding issue involved in this case."

10. In view of above discussion, I do not find any merit to interfere in the impugned order and upheld the decision of the adjudicating authority, Therefore, the appeal filed by the appellant is rejected.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: /10/2016

Attested

Mohanan V.V

(Mohanan V.V)

Superintendent (Appeal-I)

Central Excise, Ahmedabad

BY R.P.A.D.

To,
M/s Sidwin Fabric Pvt Ltd.,
Survey No.898, At-Dhundhar,
Gambhoi-Harsol Road, P O Gambhol,
NH-8, Ta- Himmatnagar, Dist. Sabarkantha
Gujarat.

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner,(Systems) Central Excise, Ahmedabad - III
4. The Dy./Asstt. Commissioner, Central Excise, Division -Gandhinagar, Ahmedabad-III
5. Guard file
6. P. A. file.

