

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(31)97/Ahd-III/2015-16/Appeal-I
V2(31)106 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-153 to 154-16-17

दिनांक Date : 18.11.2016 जारी करने की तारीख Date of Issue 22/11/16

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 सृजित

Arising out of Order-in-Original: AS PER ORDER Date: AS PER ORDER
Issued by: Assistant Commissioner, Central Excise, Din: Mehsana, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Anmol Agrotech Industries & M/s. Ambica Sales Corporation

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।

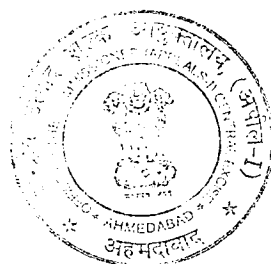
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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- ए0बी/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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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-3 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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।

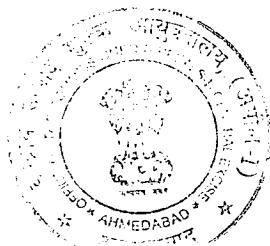
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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



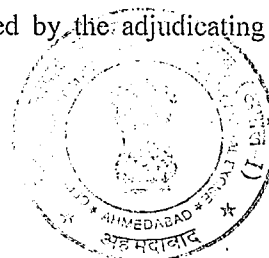
ORDER-IN-APPEAL

Following appeals have been filed by M/s Anmol Agrotech Industries, Plot No.239, GIDC-2, Dediyaan, Mehsana (for brevity- "the appellant-1") and M/s:Ambica Sales Corporation, Plot No.32/15, New Ganj Bazar, Patan, N G (for brevity-"appellant-2") against Orders-in-Original (hereinafter referred to as "the impugned order) passed by the Assistant Commissioner of Central Excise, Mehsana Division (hereinafter referred to as "the adjudicating authority"). The details are as under:

S No	Name of the appellant	OIO No. & Date	Appeal No.
1	M/s Anmol Agrotech Industries	01/AC/CE/MEH/2016 dated 18.01.2016	97/Ahd-III/15-16
2	M/s Ambica Sales Corporation	03/AC/CE/MEH/2016 dated 20.01.2016	106/Ahd-III/15-16

2. Briefly stated, the appellant-1 is engaged in the manufacture of excisable goods viz., fertilizers and pesticides. A offence case was booked against them by the Directorate General of Central Excise Intelligence, Ahmedabad (DGCEI) on 13.03.2014 on the grounds that they had wrongly availed the exemption notification No.08/2003-CE dated 01.03.2013 as amended from time to time; that they have not obtained Central Excise Registration and cleared the excisable goods without payment of duty, though they have crossed the aggregate value of excisable goods during 2013-14. During investigation, it was observed that they had cleared aggregate value of excisable goods amounting to Rs.3,61,21,780/- during the said financial year and not paid central excise duty after exceeding the aggregate value of Rs.150 lakhs. The DGCEI officers has also seized the excisable finished goods lying in stock at the time of search, as it appeared to be liable for confiscation under the provisions of Central Excise Rules, 2002 (CER). After completion of investigation, a show cause notice dated 11.09.2014 was issued to the apapellant-1 for (i) confiscating the seized goods valued at Rs.11,16,135/- under Rule 25 of CER; (ii) demanding central excise duty amounting to Rs.1,37,954/- under Section 11 A of Central Excise Act, 1944 (CEA); and (iii) imposition of penalty under Rule 25 of CER. Vide the impugned order, the adjudicating authority has confiscated the seized goods and confirmed duty demanded with interest. He has also imposed of penalty of Rs.1,37,954/-.

3. As regards appellant-2, the fact of the case is that during investigation against appellant-1, it was noticed that they were supplying goods to appellant -2 without payment of duty. During the course of search at the premises of 'appellant-2, it was noticed that goods valued at Rs.1,96,447/-, received from appellant-1 without duty payment documents, were lying in stock. The DGCEI officers has seized the said goods, as it appeared to be liable for confiscation under the provisions of Central Excise Rules, 2002 (CER). A show cause notice dated 11.09.2014 was issued to the appellant-2 for (i) confiscating the seized goods under Rule 25 of CER; and (ii) imposition of penalty under Rule 26(1) of CER. The said show cause notice was adjudicated by the adjudicating



authority, vide the impugned order, by confiscating the seized goods and also imposed penalty of Rs.18,118/-.

3. Being aggrieved, both the appellant-1 and appellant-2 filed the present appeals on the grounds that:

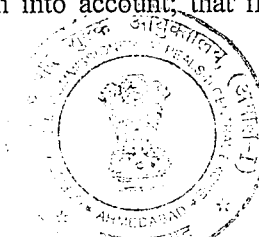
- The department has not gone through the fact and proper calculation of clearance value of the goods & SSI exemption limit; that as per the exemption notification, while calculating the aggregate value of clearance, turnover of exempted goods should not be taken into account.
- If the value of such exempted goods (i.e mineral products etc) have been excluded from the aggregate value, turnover of the excisable goods is below from the limit of SSI exemption prescribed under relevant notification. Hence, duty and penalty is not tenable.
- Confiscation under Rule 25 of CCR and penalty under Rule 26 of CCR is not applicable in their case as they have not done anything which has rendered them liable for penalty. The appellant cited various case laws in support of the argument.

4. A personal hearing in the matter was held on 08.11.2016. Shri Vipul Khandhar, Chartered Accountant appeared for the same on behalf of appellant1 and appellant-2 and reiterated the submissions made in the appeals. He further stated that the appellant-2 is a trader and no failure their part.

5. I have carefully gone through the facts of the case and submissions made by the appellant-1 and appellant-2 in the appeal memorandum as well as at the time of personal hearing.

6. In the instant case, I observe that the DGCEI officers has booked an offence case against the appellant-1 for wrong availment of SSI exemption benefit under Notification No.03/2003-CE dated 01.03.2013; that they had cleared excisable goods to the tune of Rs.3,61,21,780/- during 2013-14 without obtaining central excise registration and without payment of central excise duty after crossing the prescribed limit of Rs.150 lakhs under the said exemption notification. The DGCEI officers has also seized the excisable finished goods, valued at Rs.11,16,135/- lying in stock, under Rule 25 of CER. Accordingly the adjudicating authority has confiscated the seized goods with an option to redeem the goods on payment of Rs.2,79,100/- and also confirmed the demand with interest and a penalty of Rs.1,37,954/-. As regards case against the appellant-2, I observe that he is a trader and received excisable goods cleared by the appellant-1, without payment of central excise duty. It is the contention of the department, that the appellant-2 had purchased the said goods from appellant-1, though he was aware that the said goods were cleared without payment of proper excise duty and liable for confiscation.

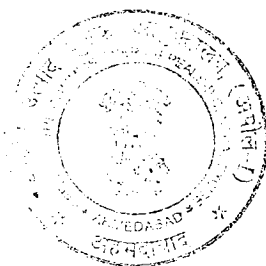
7. It is the contention of both the appellants that the clearance value of Rs.3,61,21,780/- during 2013-14 includes the clearance value of non-excisable /exempted goods and as per exemption notification *ibid*, while calculating the aggregate value of clearance, turnover of exempted goods should not be taken into account; that if such



value have been excluded from the aggregate value, turnover of the excisable goods during the relevant period is below from the limit of SSI exemption. Therefore, confiscation of goods at the premises of the appellant-1 and appellant -2 and duty demanded/penalty imposed thereof are not tenable. On the other hand, the adjudicating authority has held that the appellant has not submitted any details of exempted goods cleared by them and also not furnished any evidence to support their argument neither at the time of investigation nor later on.

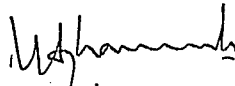
8. I find that as per provisions of the notification No.08/2003-CE dated 01.03.2003 as amended from time to time, no duty is payable on first clearances up to an aggregate value not exceeding Rs.150 lakhs made on or after the 1st day of April in any financial year. Further, I find that as per clause 3 of the notification *ibid*, *for the purpose of determining the first clearance up to an aggregate value not exceeding 150 lakhs in any financial year, clearances, which are exempt from whole of the excise duty leviable thereon (other than a exemption based quantity or value clearances) under other notification or no excise duty is payable for any other reasons, shall not be taken into account.*

9. In the instant case, it is not in dispute that the appellant-1 was availing benefit of notification No.08/2003-CE dated 01.03.2003 as amended from time to time. In the circumstances, central excise duty on exceeding clearance value of Rs.150 lakhs during 2013-14 is required to be paid by them, subject to fulfilling the other conditions of the notification. It is contended by the appellant that the total clearance value of 2013-14 includes value of non- excisable/exempted goods cleared by them. I observe that neither the appellant-1 explicit the details of non-excisable/exempted goods cleared by them during the relevant period before the investigation authority/adjudicating, nor the department has ascertained/called for such details from the appellant-1 at the time of investigation or adjudication. Though the responsibility to provide such details before the authority lies with the appellant-1, I observe that they do not do so, either at the time of investigation or at the time of adjudication and also not before the appellate authority. Looking into the facts of the case on merit, I condone such lapse on the part of the appellant-1. In the circumstances, I feel that the matter should be heard again by the adjudicating authority with the details of non-excisable/exempted goods cleared by the appellant-1 during 2013-14 and benefit under the exemption notification *ibid*, if any, should be extended to them. I also direct the appellant-1 to furnish the details of non-excisable/exempted goods before the adjudicating authority with all evidences supporting to their claim within 30 days of receipt of this order. The case booked against appellant-2 only exist, if the clearance value of excisable goods, after giving exemption to non excisable/exempted goods cleared by appellant-1 exceeded Rs.150 lakhs during the relevant period.



10. In the circumstances, I remand both the cases to the adjudicating authority for considering afresh, in view of above discussions. Needless to say that opportunity for natural justice is to be extended to the appellant-1 and appellant-2 before taking any decision.

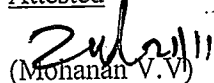
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeals filed by the appellant-1 and appellant-2 stand disposed of in above terms.


(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 18/11/2016

Attested


(Mohanan V.V.)

Superintendent (Appeals-I)
Central Excise, Ahmedabad

R.P.A.D

To

M/s Anmol Agrotech Industries,
Plot No.239, GIDC-2,
Dediyasan, Mehsana

M/s Ambica Sales Corporation,
Plot No.32/15, New Ganj Bazar,
Patan, N G.

Copy to:-

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

