

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(CHA)70/ST-4/STC-III/2015-16/Appeal-I
V2(CHA)73/ST-4/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-184 to 185-16-17
दिनांक Date 23.12.2016 जारी करने की तारीख Date of Issue 27/12/16

श्री उमाशंकर, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise
Ahmedabad

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

Arising out of Order-in-Original No AS PER ORDER dated : AS PER ORDER
Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

M/s. Rainbow Papers Limited

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

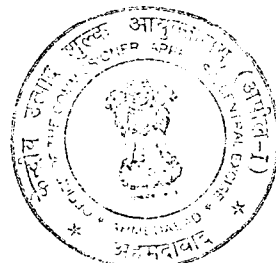
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 हैं

- (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।

4. 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,

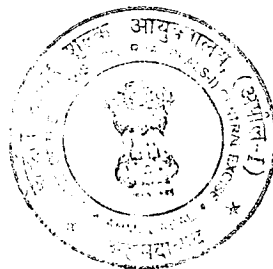
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(4)(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।

(4)(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."



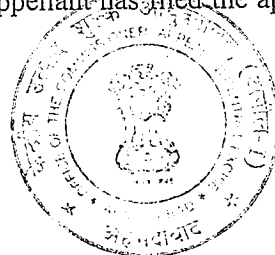
ORDER-IN-APPEAL

Following two appeals have been filed by the Deputy Commissioner of Central Excise, Kadi Division, and Ahmedabad-III (hereinafter referred to as "the appellant" under Section 84(1) of the Finance Act, 1994, as per Review Order passed by the Commissioner of Central Excise, Ahmedabad-III (for short- the review authority) against Orders-in-Original (for short-"impugned orders") passed in case of M/s Rainbow Papers Ltd, 1453, Village-Rajpur, Kalol Mehsana Highway, Dist. Mehsana (hereinafter referred to as the "respondent).

| S No | Appeal No. | OIO No. & date | Review Order & Date | Amount involved |
|------|-----------------------|-------------------------------------|---------------------|-----------------|
| 1 | 70/ST-4/STC-III/15-16 | 158/Ref/2014 dated 16.07.2015 | 75 dated 20.10.2015 | 1,94,053/- |
| 2 | 73/ST-4/STC-III/15-16 | 4/AC/Dem/CEX/14-15 dated 20.07.2015 | 76 dated 20.10.2015 | 1,94,053/- |

2. Briefly stated, the facts of the case is that the respondent had filed a refund claim of Rs.2,23,028/- with jurisdiction Central Excise Office on 11.02.2014, under notification No.41/2012-ST dated 29.06.2012 dated 29.06.2012, for the service tax paid on various taxable services which has been used for export of their finished goods. The said refund claim was sanctioned by the jurisdictional Deputy Commissioner (JDC), vide order-in-original No.42/Ref/2014-ST dated 01.04.2014. The department has filed appeal before Commissioner (Appeals), wherein it was contested that the respondent had not fulfilled the conditions laid down in the notification ibid and the refund was erroneously sanctioned; that the JDC has issued protective demand dated 20.03.2015 for the refund sanctioned as the department has filed by the said appeal. The Commissioner (Appeals) vide his OIA No.AHM-EXCUS-003-APP-172-14-15 dated 18.03.2015 has set aside the OIO dated 01.04.2014 by holding that the respondent has not followed the procedure prescribed in para (c) of the notification ibid; that no rebate shall be claimed wherever the difference between the amount of rebate under the procedure prescribed in paragraph -2 and paragraph-3 is less than 20% of the rebate available under procedure specified in paragraph-2; that in the case, the Commissioner (Appeal) found that the JDC has sanctioned the rebate claim of Rs.2,23,028/- under para-3 of the notification ibid whereas as per para -2, the rebate claim comes to Rs.1,90,299/- , thus the difference comes to less than 20% of eligible amount of rebate claim under para-2 of the notification. In view of Commissioner (Appeals) order dated -1.04.2014, the adjudicating authority has sanctioned rebate claim under the said notification as per impugned order mentioned at Sr.No.1 of above table. In respect of impugned order mentioned at Sr.No.2 of above table, the adjudicating authority has dropped the demand notice issued vide protective show cause notice dated 20.03.2015.

2. Being aggrieved, the Commissioner of Central Excise, Ahmedabad-III has reviewed the impugned orders and accordingly the appellant has filed the appeals on the



grounds that the order passed the Commissioner (Appeals) is in favour of the department; that the adjudicating authority has committed gross error in sanctioning refund vide impugned order dated 16.07.2015 and dropping demand vide impugned order dated 20.07.2015; that the adjudicating authority has wrongly decided the case under denovo proceedings, since the Commissioner (Appeals) has decided the OIO No.42/Ref/2014-15 ST dated 01.04.2014 unambiguously and had set aside. Therefore, the refund granted/demand dropped by the adjudicating authority is required to be recovered.

4. Personal hearing in the matter was granted on 08/09.08.2016, 13/14.09.2016, 17.10.2016, 28.11.2016 and 20.12.2016. The respondent, however, did not avail the opportunity of the personal hearing. As per provisions of the Section 35 of the Central Excise Act, 1944, adjournment of hearing shall be granted three times. Since the respondent has not attended for personal hearing, though sufficient opportunity has given to as per provisions of the Section *ibid*, both the case are taken for decision ex-parte.

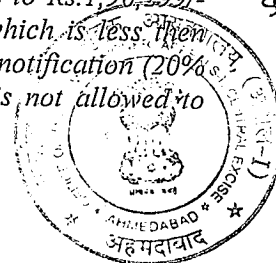
5. I have carefully gone through the appeal memorandum and other available on records/documents. The limited issue to be decided both in the appeals is as to whether the order passed by the adjudicating authority by denovo proceedings, relating to erroneous refund of service tax as per the provisions of notification No.41/2012-ST dated 29.06.2012 is correct or otherwise.

6. I observe that the issue involved in both the appeals is same and arising out of the impugned order decided by the adjudicating authority in view of OIA dated 18.03.2015. It is the contention of the department that since the Commissioner (Appeals) has decided the matter by set aside the order-in-original No.42/Ref/2014-ST dated 01.04.2014 and allowed totally in favour of the department, the adjudicating authority has no jurisdiction to decide the matter by denovo proceedings in favour of the respondent. In the circumstances, it is very much necessary to substantiate the order of Commissioner (Appeals) here. The relevant portion of the OIA is as under:

"4. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and all available records/documents placed before me. I have carefully gone through the provisions granting rebate under Notifn. No.41/2012-ST dated 29.06.2012. It is a conditional notifn. Its para 2 provides for rebate of specified percentage of FOB value(which 0.12% in the present case) whereas Para (3) provides for rebate of service tax actually paid(which is upto 0.50% of the FOB value). However, there is limitation for claiming rebate in Para (c) which is reproduced below:

"(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;"

Accordingly, I find that the adjudicating authority has sanctioned rebate of Rs.2,23,028/- under Para (3) whereas as per Para (2) it comes to Rs.1,90,299/- (0.12% of FOB value). The difference comes to Rs.32,729/- which is less than 20% of the eligible amount of rebate under Para (2) of the said notification (20% of Rs.1,90,299/-=Rs.38,059/-). So, I find that the respondent is not allowed to



claim rebate in terms of Para (3) and the adjudicating authority could have restricted the rebate claim under Para(2) of the said notification.

5. *In view of above, I set-aside the impugned order and allow the appeal filed by the appellant. "*

7. On close perusal of the above OIA, I observe that the Commissioner (Appeals) has clearly stated that since the differential amount comes less than 20% of the eligible amount of rebate available under the procedure specified in paragraph -2 of the notification No.41/2012-ST, the respondent is not eligible to claim rebate in terms of para -3. The Commissioner (Appeals) further stated the rebate claim in question could have been restricted under para-2 of the notification. In view of above observation, the Commissioner (Appeals) has set aside the order passed by the JDC in totality. In the circumstances, I observe that there is no scope for a denovo adjudication in the matter and the adjudicating authority has proceeded beyond the decision of the Commissioner (Appeals). Further, the adjudicating authority should have recovered the rebate claim sanctioned erroneously, vide the impugned order mentioned at (1) in the table above and also required to be confirmed vide the impugned order mentioned (2) above in the table. Since the adjudicating authority has failed to do so, both the impugned orders are required to be set aside.

8. In view of above discussion, I set aside the above referred impugned orders and allow both the department appeals. Both the appeals are disposed of in above terms.

(Signature)

(Uma Shanker)
Commissioner (Appeals-I)
Central Excise, Ahmedabad
23/12/2016

Attested

(Signature)
(Mohan V.V)
Superintendent (Appeals-I).

By Regd. Post A. D/Speed Post to:

1. The Asstt. Commissioner,
Central Excise Division, Kadi.
2. M/s. Rainbow Papers Ltd.,
1453, Village-Rajpur, Kalol Mehsana Highway,
Taluka-Kadi, Distt: Mehsana.

Copy to :-

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-III.
(for uploading the order on website)
4. Guard File.
5. P. A. File.

