

= रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-1) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(MISC)30/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-225-16-17

दिनांक Date 25.01.2017 जारी करने की तारीख Date of Issue

श्री उमाशंकर, आयुक्त (अपील-1) 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 सूजित

Arising out of Order-in-Original No **01/SUPDT/ST/Kadi/2016-17** dated **17.05.2016** Issued by:
Superintendent, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. Adani Wilmar Ltd.

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:-

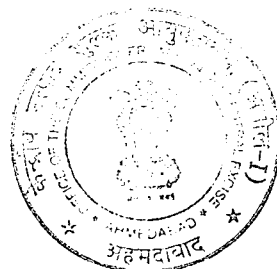
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल
कम्पाउण्ड, मेधाणी 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 रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी
होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए
5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या
उससे ज्यादा है वहाँ रूपए 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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।

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,

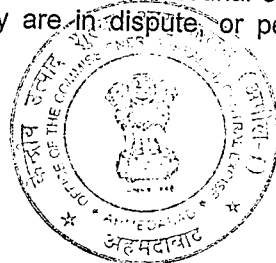
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s Adani Wilmer Ltd., C/o Kenan Oil Mill, C/171 Nr. Tulsi Petrol Pump, Karannagar, Kadi, - 382715 (hereinafter referred to as 'the appellant') is holding Central Excise registration No.AABCA8056GXM006 and is engaged in the manufacture of Refined Cottonseed Oil, Spent Earth and Fatty Acid Distillate falling under Chapters 15 and 38 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is also holding Service Tax registration No.AABCA8056GST006 and is paying Service Tax under reverse charge mechanism as a service recipient.

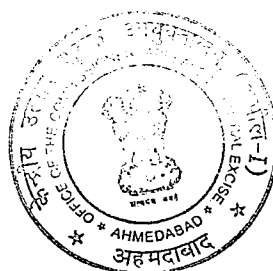
2. During the course of audit it was observed that the appellant had belatedly filed S.T.-3 returns but no late fee thereon had been paid. The details of belated returns covered in the present appeal are as follows:

Sl. No.	Quarter of Return	Due date for filing return	Date on which return filed	Delay in days	Late Fees
1.	2.	3.	4.	5.	7.
01.	October-2012 to March-2013	10/09/2013	26/04/2014	228 days	Rs.20,000/-
02.	April-2013 to September-2013	25/10/2013	29/04/2014	186 days	Rs.16,600/-
TOTAL					Rs.36,600/-

3. A Show Cause Notice F.No.VI/1(B)/01/IA/14-15/Gr.X dated 30/10/2015 as amended by corrigendum dated 25/01/2016, answerable to the Superintendent (hereinafter referred to as 'the SCN') was issued to the appellant proposing to levy the late fees amounting to Rs.36,600/- under Section 70 of the Finance Act, 1994 (hereinafter referred to as 'the Act') read with Rule 7C of the Service Tax Rules, 1994 (hereinafter referred to as 'the rules') for contravention of Section 70 ibid read with Rule 7 ibid. The SCN was adjudicated by the Superintendent, Service Tax Range, Kadi (hereinafter referred to as 'the adjudicating authority') by issuance of O.I.O.No. 01/SUPDT./ST/KADI/2016-17 dated 17/05/2016 (hereinafter referred to as 'the impugned order').

4. Being aggrieved by the impugned order, the appellant has preferred the present appeal. The grounds of appeal, inter alia, filed by the appellant are as follows:

- 1) As regards the return for the period from 01/10/2012 to 31/03/2013, the period for filing the return was extended from 25/04/2013 to 31/08/2013 under Notification No.03/2013-ST (order) dated 23/04/2013, which was further extended to 10/09/2013 vide Notification No. 4/2013-ST (order) dated 30/08/2013. The return was filed electronically and the report generated from search acknowledgement receipt shows that the return was uploaded on 30/08/2013, which was well within time and no question of penalty arises.



2) As regards the return for the period from April-2013 to September-2013, the last date for filing was 25/10/2013 and as per the report generated from search acknowledgement, the return was uploaded on 30/08/2013, which was within time and there was no question of penalty even in this case. The delay is not on their account but on account of error in the system for filing the returns.

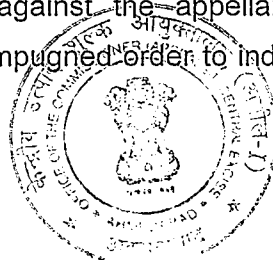
3) It will be appreciated that the system raised objection only subsequently and not immediately at the time of filing of the return. Once the return was furnished and uploaded, presumption arose that the same was in compliance with law. However, on account of system error, the final acceptance appeared to be delayed, which cannot be the basis for invoking Rule 7C.

4) The appellant had filed the returns electronically within time thus furnishing the same in terms of Rule 7(3) of the rules. The dictionary meaning of the term 'furnished' is to provide or to supply. The same when used with reference to electronic filing would cover uploading of the return.

5) Any penal action requires guilty mind. Obviously by delaying the return, no benefit had accrued to the appellant. The delay had not damaged the interest of Revenue. The delay appeared to have escaped notice for prolonged period and hence the appeal may be allowed with consequential relief.

5. Personal hearing in the appeal was held on 17/01/2017. Shri S.J. Vyas, Advocate appeared for personal hearing and reiterated the grounds of appeal.

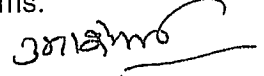
6. I have carefully gone through the show cause notices, the impugned orders and the grounds of appeal filed by the appellant. Late fees / penalty of Rs.36,600/- has been imposed on the appellant by the adjudicating authority under the provisions of Rule 7C of the rules holding that the appellant had contravened the provisions of Rule 7 of the rules in as much the returns were not filed within time. The adjudicating authority has imposed the impugned late fees / penalty for delayed filing of returns holding that the impugned returns were not NIL returns meaning that there was no scope for waiver of the said penal provisions. However, it is pertinent to note that the adjudicating authority has also arrived at a conclusion that the contention of the appellant about uploading of ST-3 returns is understandable but the same do not grant them any immunity from law or late fees as prescribed under the said act and rules. This evidences the fact that there is no dispute regarding the claim of the appellant that they had uploaded the impugned returns electronically within the stipulated time limit. In such a factual scenario, the contravention of Rule 7 of the rules against the appellant is not sustainable because there is no finding adduced in the impugned order to indicate that



the appellant was in anyway responsible for the rejection of the returns by the system or that the delay in filing of return as recorded by the system was a deliberate lapse on part of the appellant. Therefore, I find that there is merit in the claim of the appellant, as submitted in their grounds of appeal, that the delay shown in final acceptance of the impugned returns by the system cannot be the basis for invoking Rule 7C of the rules against them and the late fees / penalty is liable to be set aside. In view of the above, the appeal for setting aside of late fees / penalty is allowed.

7. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in the above terms.



(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 25/01/2017

Attested



(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Adani Wilmer Ltd.,
C/o Kenan Oil Mill,
C/171 Nr. Tulsi Petrol Pump,
Karannagar,
Kadi – 382 715.

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The Deputy Commissioner, Service Tax, Division-Gandhinagar.
5. Guard File
6. P.A.

