

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(68)13/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-226-16-17

दिनांक Date : 25.01.2017 जारी करने की तारीख Date of Issue 6/2/17

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: 04/AC/CE/MEH/2016 Date: 18.02.2016 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. Balaji Infratech

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- षोबी/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

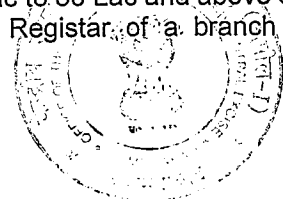
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 मैन्टल 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ 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।

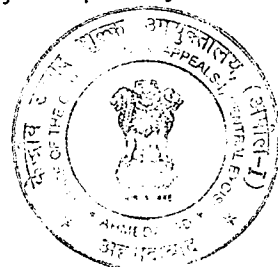
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

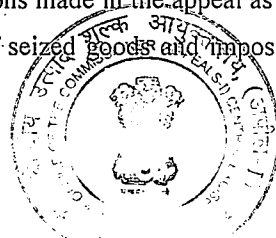
This appeal has been filed by M/s Balaji Infratech, Vill-Merwada, Tal-Palanpur, Dist. Banaskatha, Gujarat (hereinafter referred to as "the appellant") against Order-in-Original No.04/DC/CE/MEH/2016 dated 18.02.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Mehsana Division (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the fact of the case is that based on the intelligence gathered that the appellant was removing their finished goods viz. PSC poles to M/s UGCVL, Palanpur (Gujarat) without maintaining proper account and without payment of central excise duty, the factory premises of the appellant was searched by the jurisdictional Preventive Officers on 09.06.2015. During search and investigation, it was found that [i] finished goods viz., 2105 Nos. of Poles, valued at Rs.35,57,450/- involving duty of Rs.4,44,681/-, were lying in the premises without any proper account; and [ii] the appellant had cleared finished goods to M/s UGCVL under central excise invoices without payment of duty amounting to Rs.49,22,716/- during April 2014 to May 2015. The goods lying in the factory premises were seized by the officers under Panchnama dated 09.06.2015. The appellant has paid the duty amounting to Rs.4,44,681/- involved towards the seized goods and penalty @15% of the duty amount on 06.11.2015. They also paid duty amounting to Rs.49,22,716/- with interest and penalty of Rs.66,702/- on 17.11.2015 in respect of illicit clearance made to M/s UGCVL. A Show Cause Notice dated 07.12.2015 was issued to the appellant for proposing confiscation of seized goods and imposition of penalty under Rule 25 of Central Excise Rules, 2002. The said show cause notice was adjudicated vide impugned order, wherein the seized goods were ordered for confiscation with an option to redeem on payment of fine of Rs. 8.89,370/-. Further, the duty amounting to Rs.4,44,681/- was confirmed and a penalty of Rs.4,44,681/- was also imposed on the appellant.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they have ascertained the duty liability of seized goods/ goods removed to UGVCL and paid with interest and also paid penalty as per provisions of 11 AC (d) of CEA before issuance of show cause notice; that they have requested to conclude the matter as per provisions of the said Act, however, contrary to the provisions of Section *ibid*, the department has ordered for confiscation and also confirmed duty and penalty; that the adjudicating authority has erred to conclude the issue taking the irrelevant base that the main issue of illicit clearance is pending with higher authority.

4. Personal hearing in the matter was granted on 04.01.2017. Shri N.R.Parmar, Consultant appeared on behalf of the appellant. He reiterated the grounds of appeal. He further stated that main issue relating to demand of duty amounting to Rs.49,22,716/- was concluded by the competent authority of central excise department, therefore, the instant case relating to seizure part of the said proceedings may also be concluded.

5. I have carefully gone through the facts of the case and submissions made in the appeal as well as at the time of personal hearing. The case is relating to confiscation of seized goods and imposition of redemption fine and penalty consequently.



6. As per provisions of Rule 10 of Central Excise Rules, 2002, the appellant was under legal obligation to maintain proper records of production, mentioning opening balance, quantity manufactured, inventory of goods, quantity removed etc on day to day basis, duty payable on removal and duty actually paid. In the instant case, the Central Excise officers, on visit to the factory premises of the appellant on 09.06.2015, noticed that the appellant had not accounted 2105 numbers of their finished goods manufactured, as prescribed under Rule 10 *ibid*. The scrutiny of records and further investigation also revealed that they had removed finished goods, involving duty amounting to Rs.49,22,716/- to M/s UGVCL without payment of duty.

7. Rule 25 stipulates matter relating to Confiscation and penalty- which reads as:

*(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, -
 (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
 (b) does not account for any excisable goods produced or manufactured or stored by him; or
 (c)
 (d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,
 then, all such goods shall be liable to confiscation*

9. As per provisions of Rule *ibid*, any excisable goods, if not accounted, are liable to confiscation and the intent to evade duty is not a necessary prerequisite for the same. Therefore, all unaccounted excisable goods found available on 09.06.2015 were liable for confiscation, in consonance with the provisions enumerated in rule 25(1) (b) of the CER, 2002. The appellant, however, has not disputed the lapse taken place on their part, but by accepting the fact, they had paid duty involved in such unaccounted goods with appropriate interest and penalty @15% of the duty involved. They had also requested to conclude the case as per provisions of Section 11 AC (d) of CEA. The adjudicating authority has denied their request by stating that the other main issue relating to illicit clearance of goods, involving duty amounting to Rs.49,22,716/-, involved in the matter is pending for finalization before the higher authority. I observe that the department has concluded the said issue as the appellant has discharged the duty liability with interest and penalty, as communicated to the appellant vide letter dated 24.10.2016.

10. From the facts, I observe that the adjudicating authority has correctly denied the request of the appellant for conclusion of the issue involved in this case. It is an admitted fact that apart from non maintenance of proper statutory records of goods manufactured, the appellant had cleared their finished goods to M/s UGVCL without payment of duty amounting to Rs. 49,22,716/- during April 2014 to May 2015. The appellant has also paid the said duty with interest and penalty. It is very much clear from such situation that the appellant has contravened the provisions of Central Excise Act and Central Excise Rules by not maintaining proper records of goods manufactured and cleared/ not making payment of central excise duty at the time of clearance of finished goods. All these contraventions and omissions need to be seen in the context of the sensitive and evasion prone nature. These facts compel me to hold that the provisions of Rule 25(1)(b) and 25(1) (d) *ibid* are attracted to hold confiscation. Therefore, no interference is required to be made in the impugned order with regard to order of confiscation of seized goods.

11. Further, failure to maintain accounts of goods manufactured and cleared by the appellant clearly attracts penalty under the provisions of Rule 25 of Central Excise Rules, 2002 which stipulates a penalty not exceeding the duty on the excisable goods in respect of which such contravention has been committed, or rupees two thousand, whichever is greater. Looking into the facts of the case, blatant disregard for the legal obligations regarding maintaining accounts of production and clearance, penalty is



imposable on appellant. I observe that the adjudicating authority has imposed penalty of Rs.4,44,681/- i.e equal to the duty amount involved in the confiscated goods. Since the appellant has already paid penalty amounting to Rs.66,702/- before issuance of show cause notice, I take a lenient view as per provisions of Rule 25 *ibid* and accordingly, I order that no further penalty is required to be paid in this case. In other words, I reduce the penalty to Rs.66,702/-.

12. Further, I observe that the adjudicating authority has imposed redemption fine of Rs.8,89,370/- in lieu of confiscation. As discussed above, it is an undisputed and admitted fact that the appellant was clearing their finished goods only to M/s UGVCL and during April 2014 to May 2015, they had cleared their finished goods to M/s UGVCL without payment of duty amounting to Rs. 49,22,716/-. In the circumstances, it is obvious that the seized goods in question are also intent to be cleared to M/s UGVCL without payment of duty. Therefore, looking into facts, I do not find any merit to interfere the redemption fine imposed by the adjudicating and uphold the same.

13. The appeal stands disposed of accordingly.

उमा शंकर

(उमा शंकर)

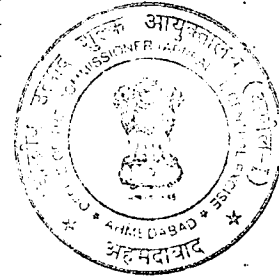
आयुक्त (अपील्स - I)

Date: 25/01/2017

Attested

20/1/2017
(Mohanan V.V.)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

To
M/s Balaji Infratech,
Vill-Merwada, Tal-Palanpur,
Dist. Banaskatha, Gujarat



Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Additional Commissioner (System), Central Excise, Ahmedabad-III
4. The Assistant Commissioner, Central Excise, Mehsana Division.
5. Guard file.
6. P.A