


 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : **V2(29)6/AHD-III/2017-18** / 1058 & 1062

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0135-17-18**

दिनांक Date : **13.10.2017** जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

A. file

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
AHM-CEX-003-ADC-AJS-002-003-17-18 दिनांक : **27.04.2017** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-002-003-17-18**, Date:
27.04.2017 Issued by: Additional Commissioner, Central Excise, Div: Kalol,
 Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Hindustan Industries

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- ०बी/35-इ के अंतर्गत:-

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

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों 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.

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 इ.ए-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-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 पढ़ी 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, 1984 की धारा 34F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 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 अर्जी एवं अपील को लागू नहीं होंगे।

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."



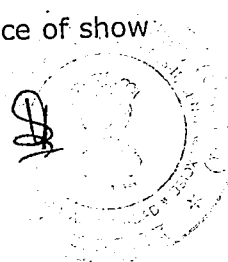
ORDER-IN-APPEAL

M/s Hindustan Industries, Plot No.128/A, Kadi Road, Dhanot, Kalol, Dist. Gandhinagar [*the appellant*] has filed this appeal against Order-in-Original No.AHM-CEX-003-ADC-AJS-002-003-17-18 dated 27.04.2017 [*impugned order*] passed by the Additional Commissioner of Central Excise, Ahmedabad-III [*adjudicating authority*].

2. Briefly stated, the appellant is engaged in manufacturing of SNCA, Zinc EDTA, Di-Sodium EDTA and Tetra Sodium falling under chapter 29 and 31 of Central Excise Tariff Act, 1985. The appellant was clearing Zinc EDTA under chapter 29 on payment of duty @12.36% up to July 2012 and thereafter, they started clearing Zinc EDTA under chapter 31 without payment of duty by availing full exemption under Notification No.12/2012-CE dated 17.03.2012 and reversing Cenvat credit @6% in terms of the provisions of Rule 6(3) of Cenvat Credit Rules, 2004 (CCR). Based on an audit objection, two show cause notices dated 31.03.2016 and 31.05.2016 were issued, alleging that since the said product Zinc EDTA is used as fertilizer, the exemption availed under notification 12/2012-CE supra is not applicable to them and attracts central excise duty @6% in terms of notification No.02/2011-CE dated 01.03.2011 as amended from time to time. The notices demanded Rs.71,37,735/- for the period from August 2012 to April 2015 and Rs.27,33,748/- for the period from May 2015 to February 2016 with interest and proposes penalty under Section 11AC of the Central Excise Act, 1944 (CEA) and under Rule 25(1) of Central Excise Rules, 2002 (CER). Vide the impugned order, the adjudicating authority has confirmed the demands of Rs.67,22,747/- and 25,79,007/- against the show cause notice mentioned supra after giving benefit of cum-duty price. The impugned order also ordered for interest and imposed penalty of Rs.33,61,374/- under Section 11 AC of CEA for the demand against Rs.67,22,747/- and Rs.2,00,000/- under Rule 25(1) of CER for the demand against Rs.25,79,007/-. While deciding the case, the adjudicating authority has appropriated the amount of Rs.69,38,026/- reversed/paid by the appellant in terms of Rule 6(3) of CCR.

3. Being aggrieved, the appellant has filed this appeal on the grounds that:

- They had reversed 6% of duty under Rule 6(3) of CCR for the clearance of goods Zinc EDTA as it attracts nil rate of duty, therefore, the demand of duty is squared up after giving cum duty price benefit by the adjudicating authority; that there is much more reversal of credit as against duty liability, therefore, excess reversal of duty may be refunded.
- All facts were disclosed to the department regarding clearance of goods without payment of duty and reversing 6% on exempted goods as they had availed Cenvat credit, therefore, no suppression of facts involved in the matter.
- Penalty is not imposable as they have paid the duty before issuance of show cause notice.
- The appellant has placed reliance on judgments in their favour.



4. Personal hearing in the matter was held on 07.09.2016. Shri N.K.Oza, Advocate appeared for the same and reiterated the grounds of appeal. He also submitted additional submissions.

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

6. In the instant case, I observe that the appellant was availing exemption under Notification No.12/2012-CE dated 07.03.2012 during the disputed period and paying nil rate of duty on clearance of goods viz Zinc EDTA and reversing Cenvat credit @6% in terms of Rule 6(3) of CCR as the said products attracts nil rate of duty. On other hand, the department raised/confirmed demand @6% of central excise duty on clearance of the said products as the said exemption notification is not applicable to the appellant case but attracts duty in terms of notification No. No.02/2011-CE dated 01.03.2011 as amended from time to time.

7. I observe that the description for availing exemption from payment of duty under notification No.12/2012-CE dated 07.03.2012 and effective rate prescribed under notification No.02/2011-CE dated 01.03.2011 as amended from time to time are as under:

Notification No.12/2012-CE dated 07.03.2012.

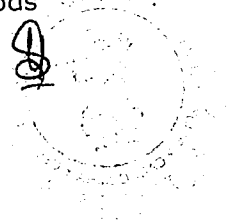
No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No
127	31	All goods, other than those which are clearly not to be used in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.	Nil	-

Effective rate of duty of 6% on specified goods under notification No.02/2011-CE dated 01.03.2011 as amended from time to time.

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of the excisable goods
21	31	All goods, other than those which are clearly not to be used- (a) as fertilizers; or (b) in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.

8. It is not disputed by the appellant that the product Zinc EDTA which is a micronutrient and is used as fertilizer. In the circumstances, the said goods attract central excise duty @6% in terms of notification No.02/2011-CE supra.

9. I observe that in the instant appeal, the appellant has not disputed the said facts of duty liability. However, they contended that [i] during the disputed periods, they had reversed 6% of duty under Rule 6(3) of CCR for the clearance of goods

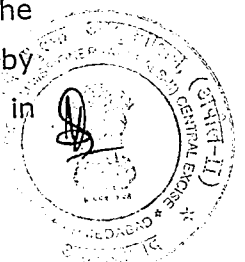


Zinc EDTA as its attracts nil rate of duty, therefore, the demand of duty is squared up and if there is much more reversal of credit as against duty liability excess reversal of duty may be refunded; [ii] No penalty is imposable as they have paid/reversed the payment equal to the duty demanded prior to issuance of show cause notice and also no suppression of facts involved in the matter as they had disclosed the details in their monthly return.

10. Since the appellant has not disputed the duty liability in respect of clearance of their product Zinc EDTA during the disputed period, I do not find any merit to interfere the order of adjudicating authority so far as it concerned with confirmation of duty amounting to Rs. 67,22,747/- and Rs.25,79,007/- for the period of April 2012 to April 2015 and May 2015 to February 2016 respectively.

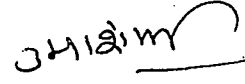
11. Now it comes to the contention of the appellant mentioned at [i] above that therefore, the demand of duty is squared up due to reversal of 6% duty in terms of Rule 6(3) of CCR. I observe that in the impugned order, the adjudicating authority has appropriated an amount of Rs.69,38,026/- reversed/paid by the appellant in terms of Rule 6(3) of CCR against the total demand and further ordered to pay the balance amount. In other words, he has adjusted the amount paid/reversed by the appellant against the duty liability. However, the appellant has contended that they had also reversed the credit duty of Rs.27,33,748/- during May 2015 to February 2016 against the demand raised in the show cause notice dated 31.05.2016, apart from the amount of Rs.69,38,026/- reversed. Further, I observe that the adjudicating authority has neither discussed the period of which the amount of Rs.69,38,026/- reversed by the appellant pertains nor mentioned the reversal of amounting to Rs.27,33,748/-. The appellant has furnished ledger details and details of periodical returns showing such payment/reversal of amounting to Rs.27,33,748/-. Looking into the facts of the case as contended by the appellant, I observe that the appellant has paid/reversed entire amount of demand as alleged in the impugned order during the disputed periods and appears that no more duty remains to be recovered from them against demand. Therefore, the total amount reversed/paid by the appellant is required to be verified by the adjudicating authority for which I remand this matter to him. The appellant is at liberty to furnish all documents of payment/reversal before the adjudicating authority in this regard. Further, I observe the appellant has also requested to refund the excess amount paid/reversed by them during the disputed period. These facts are to be considered separately by the adjudicating authority according to its merits.

12. Interest demanded under Section 11AA of CEA and penalty imposed under Section 11AC of CEA and under Rule 25 (1) of CER will be sustained in this case as the appellant has not discharged the duty liability under the proper notification. By paying/reversing Cenvat credit duty in terms of Rule 6(3) of CER will not help the appellant to escape from the violation of notification No.12/2012-CE *supra* by availing wrong availment of exemption and provisions of Rule 4, 6 and 8 of CER in



as much as they failed to payment of duty on removal of dutiable goods, assessment of duty and payment of duty. Therefore, I do not find any interference with regard to interest demanded and penalty imposed.

13. The appeal stand disposed of accordingly.

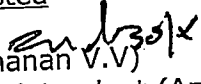


(उमा शंकर)

आयुक्त (अपील्स - I)

Date: /10/2017.

Attested


(Mohanan V.V.)

Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D.

To
M/s Hindustan Industries,
Plot No.128/A, Kadi Road,
Dhanot, Kalol, Dist. Gandhinagar

Copy to:-

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

