

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(69)75/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-030-17-18

दिनांक Date : 26.05.2017 जारी करने की तारीख Date of Issue

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

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

Arising out of Order-in-Original: 17/D/GNR/VHB/2016-17 Date: 22.08.2016 Issued by:
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Swastik Ceracon Ltd. Unit-4

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 प्रक्रिया के दौरान हुई हो।

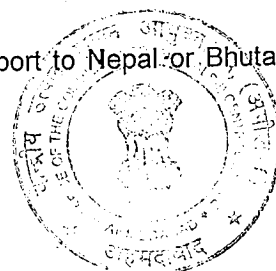
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 an 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 चबूत 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- ण0बी/35-इ के अंतर्गत:-

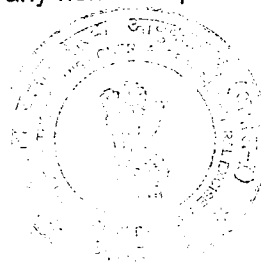
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

(a) 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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण 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 not withstanding the fact that the one appeal to the Appellant 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, 1984 की धारा 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 होंगे।

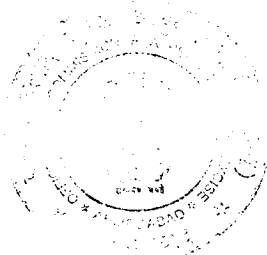
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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 Swatik Ceracon Ltd (Unit-4), Ceramic Zone, Khatwad Road, AT & PO Dalpur, Ahmedabad-Himmatnagar Highway, Ta. Pramtij, Dist. Sabarkantha, Gujarat (hereinafter referred to the appellant) filed an appeal against the Order-in-Original No.17/D/FNR/VHB/2016-17 dated 22.08.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. The appellant is engaged in the manufacture of Ceramic Glaze Floor Tiles falling under Chapter 69 of Central Excise Tariff Act, 1985 and holding Central Excise Registration. The appellant's factory premise and other sister concern units located at other places were searched by the Central Excise Officers on 08-10.07.2015, on the basis of information that the appellant had indulged in gross negligence to the obligations cast upon them under Central Excise procedures. During the course of search at the factory premise of the appellant, the central excise officers had taken physical stock of finished goods lying in the factory and it was observed that 1242 Nos of Ceramic Glaze Floor Tiles of various Grade and Size lying excess as compared to stock report as on 07.07.2015. The said goods valued at Rs.10,39,910/- (Rs.5,71,951/- after 45% abatement) was found not accounted for in their books and accounts. The said entire stock of finished goods found excess lying in the factory premises was seized on the reasonable belief that the same was intended to be cleared without payment of duty. After investigation, a Show Cause Notice dated 23.11.2015, proposing for confiscation of seized goods and imposition of penalty under Rule 25 of Central Excise Rules, 2002 was issued. This SCN was adjudicated vide impugned order, wherein the seized goods were ordered for confiscation with an option to redeem on payment of fine of Rs. 1,43,000/-. Further, a penalty of Rs.71,494/- was imposed on the appellant.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that there was no evidence of any clandestine removal or pointing to *malafide* on the part of appellant; that improper accountable of goods and shortage of finished goods found during stock taking was due to clerical error and bonafide mistake due to daily mass production and clearances; that there was no malafide intention to clear the excess goods clandestinely without payment of duty and no concrete evidence brought on record in this regard; that merely on presumption and assumptions. it could not be said the goods are meant for clandestine removal; and that in view thereof, fine and penalty ought to have been set aside. The appellant has cited various case laws in support of their arguments.

4. Personal hearing in the matter was held on 19.04.2017 and Shri Nilam A Shah appeared before me, on behalf of the appellant. He reiterated the averments made in their grounds of appeal and submitted various case laws in support.

5. I have carefully gone through the facts of the case narrated in the appeal and other relevant documents. The case relates to confiscation of seized goods valued at Rs.5,71,951/-, found not properly accounted; and consequent imposition of redemption fine and penalty.

6. Rule 10 of Central Excise Rules, 2002. *inter alia*, stipulates that:

1) Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity



removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

(2) The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorized agent.

In view thereof, the appellant, a registered manufacturer, 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. Further, the appellant was required to authenticate each account book, and was obligated to preserve records of last five years. In the instant case, the Central Excise officers, on visit to the factory of the appellant on 8-10.07.2015, noticed that the appellant had not accounted for 1242 Nos of Ceramic Glaze Floor Tiles in their requisite register. I observe that despite getting registered with Central Excise Department, the appellant accepted having not accounted for the said goods placed under seizure, as mandated in rule 10 *ibid*.

7. It would be pertinent to look at the relevant excerpts from Rule 25 of the CER 2002:

RULE 25. Confiscation and penalty. — (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

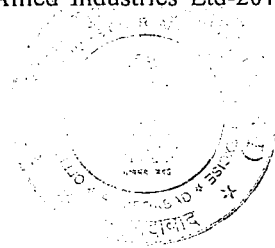
(b) does not account for any excisable goods produced or manufactured or stored by him; or

(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*

8. The difference between two independent provisions 25(1)(b) and 25(1)(d) *ibid* needs to be highlighted. 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, in view of findings at Para 6 above, all excisable goods found available as unaccounted at the time of search were liable for confiscation, in consonance with the provisions enumerated in rule 25(1)(b) of the CER, 2002. The appellant has cited clerical mistake for their failure to non-accounted goods, as required under the law. This reason for contravening the law is not tenable. Non account of finished goods in the stock register indicates lack of *bonafide* on the part of the appellant and such contraventions and omissions need to be seen in the context of the serious nature. These facts compel me to hold that the provisions of Rule 25(1)(d) *ibid* also are attracted independently, to hold confiscation. Therefore, no interference is required to be made in the impugned order with regard to order of confiscation of seized goods.

9. The appellant cited various case laws in their favour, holding that mere non-accountal does not attracts confiscation and penalty thereof, which is distinguishable. I observe that there is catena of decisions that non-accountal of finished goods in stock register attracts confiscation and penalty under Rule 25 (1) (b) of CER 2002 and *mens-rea* is not required to be proved. In this regard, I further observe that the adjudicating authority has relied on decisions in the case of [i] CCE Vs Kumar Industries-2010(261)ELT 546-Tri Del; [ii] S.K.Sacks Pvt Ltd-2011 (266) ELT 259 (Tri-Del); [iii] CCE Vs Orissa Concrete & Allied Industries Ltd-2010



(261) ELT 173-Tri.Del] [iv] Shree Shyam Pulp & Board Mills Ltd-2014 (309) ELT 497-Tri. Del]. All the cited decisions are squarely applicable to the facts of the instant case. In this regards, I also further rely on the decisions of Principal Bench, CESTAT New Delhi in the case of [i] M/s Kunal Enterprises -2014 (303) ELT 547; [ii] M/s Micro Super Cables (P) Ltd-2012 (283) ELT 303; and[iii] decisions of Hon'ble CESTAT, Ahmedabad in the case of CCE V/s Gujarat Texpin Ltd-2009 (234) ELT 167; [iv] M/s Salon Ceramics Ltd -2008 (232) ELT 525. In the case of M/s Salon Ceramics Ltd, the Hon'ble Tribunal has observed that "Confiscation, penalty and redemption fine - Excess physical stock found on verification in comparison with production shown in RG-1 - Huge difference attributed to clerical mistake by appellant - Explanation not convincing though interesting - Confiscation of excess goods deserves to be upheld although there is no evidence of clandestine removal."

10. Further, failure to non-accountal of finished goods 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, I do not find any merit to interfere the quantum of redemption fine and penalty imposed.

11. In view of above discussions, I reject the appeal filed by the appellant and uphold the impugned order.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/05/2017

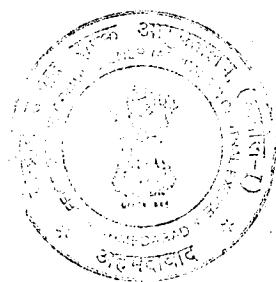
Attested

Mohanan V.V.
(Mohanan V.V.)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To,

M/s Swatik Ceracon Ltd (Unit-4),
Ceramic Zone, Khatwad Road, AT & PO Dalpur,
Ahmedabad-Himmatnagar Highway, Ta. Pramtij,
Dist. Sabarkantha, Gujarat



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, Division-Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.