
 <p>केन्द्रीय कर आयुक्त (अपील)</p>		
<p>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</p>		
<p>वस्तु एवं सेवा</p>	<p>GST Building, 7th Floor,,</p>	
<p>कर भवन,</p>	<p>Near Polytechnic,</p>	
<p>सातवांमंजिल, पॉलिटेक्निक के पास,</p>	<p>Ambavadi, Ahmedabad-</p>	
<p>आम्बावाडी, अहमदाबाद-380015</p>	<p>380015</p>	
<p>☎ : 079-26305065</p>		<p>टैलेफैक्स : 079 - 26305136</p>

क फाइल संख्या : File No : V2(68)90/AHD-III/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-075-17-18**

दिनांक Date : **27.07.2017** जारी करने की तारीख Date of Issue: **14-8-17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

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-DSN-037-16-17 दिनांक : **02.11.2016** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-037-16-17**, Date: **02.11.2016**
Issued by: Additional Commissioner, Central Excise, Div:Kadi, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Amol Dicalite Ltd.

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 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- णबी/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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 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 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 अनुसूचि-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 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 रुपए 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 अर्जों एवं अपील को लागू नहीं होंगे।

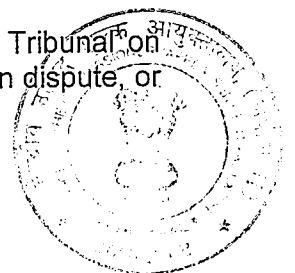
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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



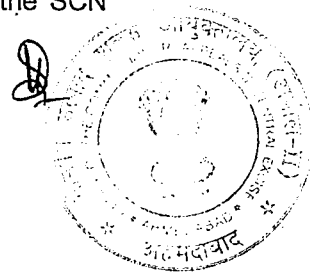
ORDER-IN-APPEAL

M/s. Amol Dicalite Ltd., Plot No.1, GIDC Estate, Kadi, Mehsana-382715 (in short 'appellant') has filed an appeal against Order – in - Original No. AHM-CEX-003-ADC-DSN-037-16-17 dated 02.11.2016(in short 'impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-III (in short 'adjudication authority').

2. Briefly stated that based on CERA audit objection that in purchase order of M/s. Sandoz Pvt. Ltd., the place of removal was shown as destination of buyer and rates quoted in the purchase order were inclusive of freight(cost of transportation). However, the appellant was showing the freight separately in the invoice and not considered such freight for assessment. As per Rule 5, Explanation 2 of the Central Excise Valuation(Determination of Price of Excisable Goods) Rules, 2000, the cost of transportation upto the factory gate of M/s. Sandoz Pvt. Ltd. should be part of transaction value and excise duty was to be charged accordingly. This resulted into issue of SCN dated 03.05.2016 for the period from 2011-12 to 2015-16(April-2011 to September-2015) for recovery of Rs.10,51,517/- duty short paid alongwith interest under proviso to Section 11A(1) and Section 11AB/Section 11AA of the Central Excise Act, 1944 respectively and imposition of penalty under Section 11ACibid. The adjudicating authority vide impugned order confirmed the demand of duty of Rs.75,852/- under Section 11A(10)ibid; upheld interest payable under Section 11AB/11AAibid; imposed penalty of Rs.45,066/- under Section 11AC(1)(c)ibid with an option to pay penalty @25% under Section 11AAibid if entire duty confirmed is paid with interest within 30 days of receipt of impugned order by the appellant.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, *interalia*, they submitted that:

- (a) the impugned order, despite specific ground taken by them as regards applicability of decision of Supreme Court, is silent on the subject and does not deal with said submission.
- (b) the department has not ascertained the place of removal in the facts of the present case.
- (c) the lorry receipt of the transporter clearly shows name of the buyer. As such, sale is complete at their factory gate and place of removal is their factory gate. The onward transportation, therefore, cannot form part of assessable value.
- (d) as per definition of 'place of removal' given Section 4, buyer's place is not a place where the goods are stored for sale.
- (e) the term 'sale' is defined under the CEA and the definition covers transfer of possession and not transfer of ownership in the goods.
- (f) their matter is covered by decision of Supreme Court in case of Ispat Industries-2015(324)ELT-670(SC) para 16 which says that in order to constitute any place to be place of removal, it has to be referable only to manufacturer. Once the place of removal is not buyer's place, the entire basis of demand in the SCN would disappear.



(g) the demand subsequent to Sept-2013 is time barred and penalty u/s 11AC is not tenable.

4. Personal hearing in the matter was held on 20.07.2017. Shri S.J. Vyas, advocate, appeared on behalf of the appellant and re-iterated the grounds of appeal and submitted that 'place of removal' cannot be buyer's premises as per decision given in case of CCE, Nagpur Vs. Ispat Industries Ltd. reported in 2015(324)ELT-670(SC).

5. I have carefully gone through the records of the case, submissions made in the appeal memorandum, personal hearing and evidences available on records. I find that the subject appeal is hit by limitation of 4 days in terms of provisions contained in Section 35(1) of the CEA, 1944. No application or request is made for condonation of delay of 4 days either way by the appellant i.e oral or written at any point of time. However, I condone the said delay of 4 days in terms of powers vested in me vide proviso to Section 35(1)ibid and proceed to decide the case on merits. I find that main issue to be decided is whether cost of transportation incurred beyond the place of removal is liable to duty or otherwise.

6. Prima facie, I find that the entire base of subject SCN dtd.25.01.2016 is CERA objection stated in para 2 supra. The adjudicating authority has confirmed the demand of Rs.75,852/- against total demand of Rs.10,51,517/- and dropped the demand of Rs.9,75,665/- considering the factory gate of the appellant as 'place of removal' in view of the documentary evidences and provisions contained in Section 4 of the CEA, 1944 and Rule 5 of the CER, 2000 vide impugned order.

6.1 As regards, confirmed demand of said Rs.75,852/-, I find that the purchase order no.9910223090 dtd.22.03.2011, 9910249438 dtd.07.06.2011 and 9910835627 dtd.04.09.2015 contains the terms of delivery as 'FOR MAHAD' and corresponding sales invoices also indicated 'Door Delivery'. Explanation 2 to Rule 5 of the Central Excise Valuation(Determination of Price of Excisable Goods) Rules, 2000 also clarifies that if the factory gate is not the place of removal, the cost of transportation upto the place of removal shall not be excluded from the value. So, to this extent, I do agree with the findings of the adjudicating authority vide Para 21 of the impugned order. Further, in this regard, I find that the appellant has not contended anything either in the grounds of appeal or at the time of personal hearing. On the contrary, the appellant has totally relied upon the decision given in case of CCE, Nagpur Vs. Ispat Industries Ltd. reported in 2015(324)ELT-670(S.C.). I have carefully gone through this citation. I find that period covered in this case is from 28.09.1996 to 31.03.2003. In this citation the Hon'ble Supreme Court has elaborated amendment made in the definition of Section 4 of the CEA, 1944 throughout till 14.05.2003 particularly the term 'place of removal', 'place of delivery, 'normal value' and 'transaction value' in depth when the prices were 'ex-works'. However, in the instant case, I find that ratio of this decision cannot be applied in toto since the price is 'FOR MAHAD' in the said 3 purchase orders and period covered in the subject appeal is from 2011-12 to 2015-16 i.e. after amendment made in Section 4 w.e.f. 14.05.2003 underwhich 'place of removal' is extended to ' a depot, premises of a



consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory' vide Section 4(1)(c)(iii)ibid. So, for the goods cleared against said 3 purchase orders is concerned, the place of delivery is 'FOR MAHAD' which implies that ownership of the goods remains with the seller till its delivery to the buyer and property in goods is transferred at this point of time. This aspect is very well cleared by the Board vide 37B Order No.59/1/2003-CX dated 03.03.2003 as under:

"8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not to be the sole consideration to decide the ownership or the point of sale of goods."

Consequently, in the present case, sale is complete at buyer's doorstep since terms of delivery of goods is 'FOR MAHAD'. Hence, cost of transportation needs to be included in the value of the goods in terms of provisions of said Rule 5 of the valuation rules and duty is required to be paid alongwith interest on cost of transportation from the factory of manufacturer till the doorstep of the buyer. To this extent, the findings of the adjudicating authority holds goods and contention of the appellant to apply ratio of said decision to entire demand does not hold good and the adjudicating authority has correctly confirmed the demand alongwith interest in terms of provisions contained in Section 11A(10) and Section 11AB/11AAibid respectively.

6.2 As regards imposition of penalty under Section 11AC(1)(c) of the CEA, 1944, I agree with the findings of the adjudicating authority vide para 24 of the impugned order.

7. In view of the above discussion and findings, I uphold the impugned order and set-aside the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Dt. 27/07/2017

Attested:

13/7/17
(B.A. Patel)
Superintendent(Appeals)
Central Tax, Ahmedabad.

BY SPEED POST TO:

M/s. Amol Dicalite Ltd.,
Plot No.1, GIDC Estate, Kadi,
Mehsana-382715.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Gandhinagar.
- (3) The Assistant Commissioner, Central Tax Division, Kadi.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file
- (6) P.A. file.

