
		कदीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन GST Building, 7 th Floor, Near Polytechnic Ambavadi, Ahmedabad-380015 सतवी मंजिल पॉलिटेक्निक के पास अम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलीफैक्स : 079-26305136		

क फाइल संख्या : File No : **V2(48)46&47/AHD-III/2016-17** 599/604

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-083-84-17-18**

दिनांक Date : **28.08.2017** जारी करने की तारीख Date of Issue: 26/9/17

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-MLM-022-15-16 दिनांक : 30.12.2015 से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-MLM-022-15-16**, Date: 30.12.2015
 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. Rajshree Paper Productg Pvt. 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।

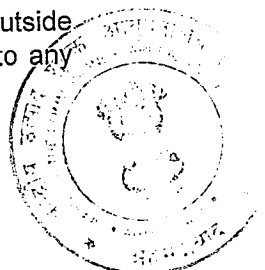
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।

(iii) 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:-

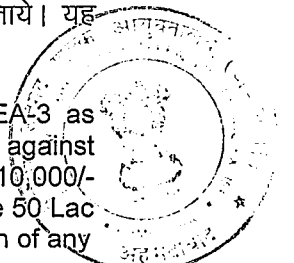
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलाव 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 मैनटल 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 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 63 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,

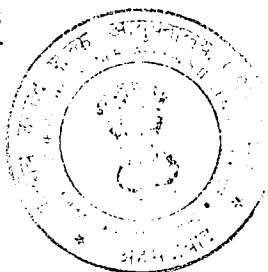
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

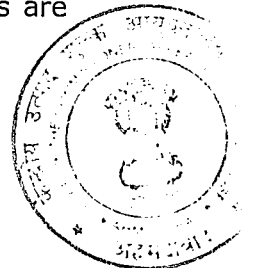
Following two appeals have been filed by the appellant mentioned in column No.2 of below table along with condonation of delay application in filing of appeal, against Order-in-Original No.AHM-CEX-003-ADC-MLM-022-15-16 dated 30.12.2015 [hereinafter referred to as "the impugned order"] passed by the Additional Commissioner of Central Excise, Ahmedabad-III [hereinafter referred to as "the adjudicating authority"].

S No	Name of appellant	Appeal No	Amount (Rs)
1	Rajashree Paper Products Pvt Ltd, Kadi, Mehsana (for short-appellant-1)	46/Ahd-III/16-17	10,73,510/- duty 10,53,510/-penalty
2	Shri Jayesh Patel, Director of Rajashree Paper Product P Ltd (for short-appellant-2)	47/Ahd-III/16-17	1,50,000/- penalty

2. The appellant-1 is engaged in manufacturing of various categories of paper falling under chapter 48 of CETA, 1 985. Based on intelligence that they were involved in evasion of central excise duty in clearance of manufactured final products, the officers of DGCEI were conducted investigation against them. Scrutiny of records and further detailed investigation, it was observed that the appellant-1 had cleared 4,65,552 Kgs of excisable goods valued at Rs.1,85,58,153/- without cover of invoices and without payment of central excise duty amounting to Rs.10,73,510/- during the period from December 2012 to May 2013. Accordingly, a show cause notice dated 09.08.2014 was issued to them for recovery of said evaded duty with interest and imposition of penalty. The said show cause notice also proposes for imposition of penalty on appellant-2 as he has actively involved in such clearance of goods clandestinely. Vide the impugned order, the adjudicating authority has confirmed the duty demanded with interest and penalty of equal duty on appellant-1 and also imposed penalty of Rs.1,50,000/- on appellant-2.

3. Being aggrieved, the appellant-1 has filed the appeal mentioned at Sr. No.1 above on the grounds that they had already paid the amount in question during the course of investigation; that the adjudicating authority has erred in imposition of penalty in the impugned order and requested to set aside the penalty. The appellant-2 has also stated that the authority has erred in imposition of penalty in the impugned order and requested to set aside the penalty.

3. Personal hearing in both the appeals has granted on 17.01.2017, 24.01.2017, 15.03.2017 and 17.05.2017. However, though sufficient opportunity of the personal hearing has granted as per provisions of Section 35 (1A) of the Central Excise Act, 1944, they did not avail such opportunities. Therefore, both cases are taken for decision ex-parte.

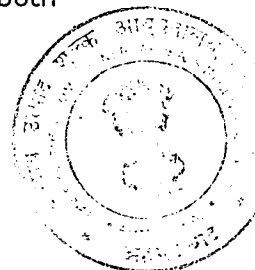


4. I have carefully gone through the facts of the case available on records. I observe that both the appellants have filed condonation of delay application in filing of appeal on the grounds that they shut down their business activities from the manufacturing rented premises and vacated the said place; that the authorized person who obtained the impugned order from the department had not delivered in time. The appellant could not comply with the procedure of filing the appeal within the time prescribed due to financial crises and non-availability of concerned Director of the appellant.

5. I observe that as per jurisdictional office record, the impugned order dated 31.12.2015 was received by Shri Vipulkumar Patel, Authorized signatory on 06.01.2016, on behalf of the appellant-1 and appellant-2. Both the appellant have filed the instant appeals on 10.06.2016.

6. The provisions of Section 35 of the Central Excise Act, 1944 states that any person aggrieved by any decision or order passed under this Act may appeal to the Commissioner of Central Excise (Appeals)] within sixty days from the date of the communication to him of such decision or order. Further, the proviso to the said Section states that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days. In other words, the delay in filing appeal can be condoned only for a further period thirty days from the date of prescribed period of sixty days lapses i.e ; that the Commissioner (Appeal) cannot be condone the delay more than thirty days i.e the Commissioner (Appeals) can be condoned the delay if the appellants files appeal on or before 05.04.2016. In the instant case, both the appeals were filed on 10.06.2016 i.e with a delay of 96 days from the prescribed sixty days period. The delay in filing is beyond the period of 30 days as per provisions of Section 35 f *ibid*. The Commissioner (Appeals) cannot condone the delay beyond the prescribed period, therefore, both the appeals hit by limitation of time as prescribed in the Section *ibid*. Accordingly, I reject the same as time barred.

6. Further, also looking into the merit of the case, I observe that the case is relating to evasion of central excise duty amounting to Rs.10,73,510/- on clearance of goods clandestinely by the appellant-1 which was not disputed by them. Further, by accepting the same, they had paid the evaded duty during the course of investigation. In the appeal, they had only questioned imposition of penalty. I observe that the clandestine removal has come to notice of the department only after the investigation. Otherwise, the same would have un-noticed and evasion would have escaped. In the circumstances, the penalty imposed on appellant-1 as well as appellant-2 who had actively involved on such illicit clearance was factually correct and no interference required. In the circumstances, on merit also both appeals fails.



7. In view of above discussion, I reject the appeal filed by the appellant-1 and appellant-2 and uphold the impugned order totally. The appeals stand disposed of accordingly.

U. Shikar

(उमा शंकर)

आयुक्त (अपील्स - I)

28/08/2017

Attested

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

BY RPAD.

To,

Rajashree Paper Products Pvt Ltd, Opp.N.K.Protiens Ltd, AT Thol, Kadi-Sanand Road,Tal-Kadi, Mehsana-Dist	Shri Jayesh Patel C/o Rajashree Paper Products Pvt Ltd, 136, Karanavati Estate, Odhav, Ahmedabad
<u>New Address:</u> Rajashree Paper Products Pvt Ltd, 136, Karanavati Estate, Odhav, Ahmedabad	

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Gandhinagar.
3. The Additional Commissioner (System), Central Excise, Gandhinagar.
4. The Additional Commissioner, Central Excise, Gandhinagar
5. The Deputy/ Assistant Commissioner, Central Excise, Kadi Division, Gandhinagar.
6. Guard file.
7. P.A

