
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	वस्तु	एवं सेवा	GST Building, 7 th Floor,
	कर भवन		Near Polytechnic
	सातवीं मंजिल, पोलिटिकल कॉलेज के पास		Ambavadi, Ahmedabad-
	आम्बावाडी, अहमदाबाद-380015		380015
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क फाइल संख्या : File No : V2/87/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-119-18-19

दिनांक Date : 11-10-2018 जारी करने की तारीख Date of Issue: 4/12/2018

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-AJS-019-17-18 दिनांक : 19-02-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-019-17-18, Date: 19-02-2018
Issued by: Additional Commissioner, CGST, Div: RRA, HQ, Gandhinagar
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Dineshbhai Patel (Sohni Ceramics)

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 हैं।

(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.

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- (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, अपीलो 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 वहां 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 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

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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 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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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।

ORDER-IN-APPEAL

Shri Dineshbhai Ishwarbhai Patel, partner of M/s. Sohni Ceramics, Motipura, Himatnagar (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.AHM-CEX-003-ADC-AJS-019-17-18 dated 19.08.2018 (henceforth, "impugned order") passed by the Additional Commissioner, Central GST & Central Excise, Gandhinagar (henceforth, "adjudicating authority").

2. Brief facts of the case are that based on the intelligence of clearance of goods illicitly, the factory premise of M/s. Sohni Ceramics, a manufacturer of ceramic floor tiles wherein the appellant is a partner was searched on 19.08.2011 by officers of Central Excise under regular panchanama wherein shortage of 106088 boxes of finished goods involving central excise duty Rs.19,21,626/- were found and one pen drive alongwith other documents were withdrawn. Illicit clearance of finished goods involving central excise duty Rs.41,74,490/- were also found from data retrieved from pen-drive. Investigation revealed that said shortage of finished goods as compared to statutory record was found due to clearance of the same without preparation of invoice and without payment of duty. The partners of the firm admitted that due to business loss they sold goods without payment of excise duty and they were ready to pay the duty. They also admitted that raw material clay and powder were purchase by them from market in cash and they show more use of freight and purchase corrugated boxes in cash and does not remember details of said suppliers. Show cause notice issued after the investigation demanding duty amounting to Rs.61,63,995/- invoking extended period was decided under impugned order confirming duty under Section 11A, order for interest under Section 11AA, imposing penalty equalant to duty Section 11AC of Central Excise Act, 1944 on the firm as well as on Shri Dineshbhai Ishwarbhai Patel, partner of the firm under rule 26 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that personal penalty imposed is not justifiable on the ground that production capacity of the kiln installed in the factory was 55000 to 60000 sqr.mtr.(i.e.approx 40000 boxes) per month. However, clearance of boxes considered more than the same in the show cause notice is far away from imagination. This crucial fact has

been ignored by the adjudicating authority; that only oral evidences in the form of statement of partners/employees are not valid evidence without corroborative evidence, statement dated 20.08.2011 recorded under duress; that nothing incriminating were found from premises of Trimurti Enterprise, Himatnagar, a buyer, which can substantiate the illicit clearance; that no stock taking of raw material or packing material were conducted in absence of which clandestine removal of finished goods cannot be proved, there should be corroborative evidence by way of purchase, distributor or dealer, to support their claim they cited case law M/s. Mahesh Silk Mill v/s CCE Mumbai 2014(304)ELT 703(Tri. Ahd) etc.; that cross examination of witnesses was not allowed; that the appellant was looking after daily production of ceramic tiles and he was not at all concerned with any other work, adjudicating authority erred in considering his role and in absence of any corroborative evidence for illicit manufacture and illicit clearance, penalty imposed on the appellant is bad in law. They reiterate submissions made in the grounds of main appeal filed by the company and also requested for condonation of delay in filing the appeal. To support their claim they cited case law M/s. Mahesh Silk Mill v/s CCE Mumbai 2014(304)ELT 703(Tri. Ahd), etc.,

4. In the Personal hearing held on 12.09.2018 Shri N.R. Parmar, Ld. Consultant reiterated the grounds of appeal.

5. I have carefully gone through the appeal wherein based on intelligence, the factory premises wherein the appellant is partner was searched by Central Excise officers, physical stock taking of finished goods was conducted to check it with stock accounted for and some torn invoices alongwith pen drive were withdrawn under panchanama. Investigation revealed that the firm has failed to account for production and sales of finished goods manufactured by them, not prepared central excise invoice and clearance finished goods without payment of duty. Central Excise duty demanded on account of clandestine removal of goods has been confirmed under the impugned order alongwith interest and imposition of penalty by the adjudication authority.

6. The appellant mainly contested that in absence of any corroborative evidence, personal penalty imposed is bad in law. They have pleaded that production capacity of the kiln installed in the factory was 55000 to 60000 sqr.mtr.(i.e.approx 40000 boxes) per month. However,

clearance of boxes considered more than the same in the show cause notice is far away from imagination. This crucial fact has been ignored by the adjudicating authority; that only oral evidences in the form of statement of partners/employees are not valid without corroborative evidence; that Statement dated 20.08.2011 recorded under duress. Nothing incriminating were found from premises of Trimurti Enterprise, Himatnagar, a buyer, which can substantiate the illicit clearance; that no stock taking of raw material or packing material were conducted in absence of which clandestine removal of finished goods cannot be proved. There should be corroborative evidence by way of purchase, distributor or dealer. To support their claim they cited case law M/s. Mahesh Silk Mill v/s CCE Mumbai 2014(304)ELT 703(Tri. Ahd) etc.,

I observe that the appeal filed by M/s Sohni Ceramics, Himatnagar, against the impugned order has already been decided under OIA NO. AHM-EXCUS-003-APP-108-18-19 dated 11.09.2018.2018 upholding the finding of the adjudicating authority. All the above grounds raise by the appellant has been dealt with in detail under the main appeal observing the finding of the adjudication authority non interventional. It was further observed in said appeal that the firm where the appellant is a partner was guiltfully and fraudulently involved in clandestine clearance of finished goods and penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1994 was rightly imposition of under the impugned order. The appellant has further contested that he was looking after daily production of ceramic tiles and he was not at all concerned with any other work, and therefore, in absence of any corroborative evidence for illicit manufacture and illicit clearance, the adjudicating authority has erred in considering his role. Said argument of the appellant itself is contradictory in nature in so far as he remained in charge of the daily production activities managing of which needs care of clearance factor indirectly. In order to manage stock of finished goods in an effective way, it would not be proper to de-link the production department from day to day clearance activities in any firm. Therefore, the argument of the appellant that he is not at all concerned with other work of the firm is not good enough particularly in his capacity as a partner. Plain reading of rule 26 of the Central Excise Rules, 2002 states as under :



“26. Penalty for certain offences : (1) Any person who acquires possession of, or is in any way concerned, in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.

(2) Any person, who issues -

- (i) an Excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or
- (ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of Cenvat credit under the Cenvat Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.”

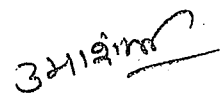
Perusal of sub-rule (1) of Rule 26 of the Rules would demonstrate that any person, who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater. Further, the case law cited by the appellant pertains to manufacturer of man made fabrics on **job work basis**, furthermore, the **statement was retracted** and hence the same involving different facts cannot be made applicable to this case.

7. In view of the discussion in foregoing paras and Since the appellant in his capacity as Director of the firm has categorically admitted clandestine removal of the finished goods and the statements has not been retracted before the Central Excise Officers, I am of the view that penalty confirmed against the appellant by the authority below is proper and justified.

8. In view of aforesaid discussion, I uphold the impugned order so far it relates to imposition of penalty on the appellant and reject the appeal.

9. 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.

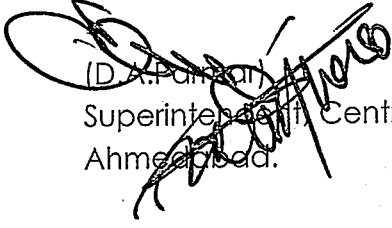


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested


(D.A. Panjari)
Superintendent, Central Tax (Appeals)
Ahmedabad.

By R.P.A.D.

To,
Shri Dineshbhai I Patel, partner of M/s. Sohni Ceramics,
Near; Government Polytechnic College Road, N.H. 8, Motipura,
Himatnagar, Dist; Sabarkantha.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Gandhinagar.
4. The Asst./Deputy Commissioner, Central Tax, Division-Himatnagar.
5. Guard File.
6. P.A.

