
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सतर्वा मंजिल पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलीफैक्स 079-26305136	

क फाइल संख्या : File No : **V2/41,42,43/GNR/2018-19**

8009 70 8014

ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-130-132-18-19**

दिनांक Date : **28-12-2018** जारी करने की तारीख Date of Issue:

8/1/2019

**श्री उमाशंकर** आयुक्त (अपील) द्वारा पारित

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

C. file

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
**12,13,14/MEH/Final/Ref/17-18** दिनांक : **24-03-2018** से सृजित

Arising out of Order-in-Original: **13/MEH/Final/Ref/17-18**, Date: **24-03-2018** Issued by:  
 Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate,  
 Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

**M/s. Nirajkumar Prabhudas Patel**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

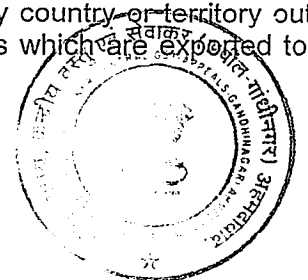
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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- 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 दूसरी मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

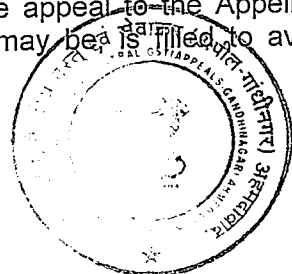
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 required 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 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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:

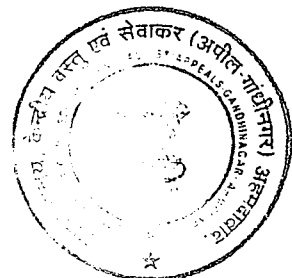
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



**ORDER IN APPEAL**

Three appeals have been filed before the Appellate Authority under section 107 of the Central Goods and Services Act, 2017, by M/s. Nirajkumar Prabhudas Patel, Bright Flame International, 142, Tirupati Market, Opposite C N Commerce College, Visnagar -384315 [for short -'appellant'], holding GSTIN No. 24AQUPP6733FIZF, against three impugned original passed in Form GST RFD 06, all dated 24.3.2018, the details of which are as follows:

Sr. No.	Appeal No.	Order no. and Date of Form GST RFD 06	Period of dispute	Amount under dispute	
				Central	State
1	V2/41/GNR/2018-19	13/Meh/Final/Ref/2017-18 dated 24.3.2018	September 2017	2123228	2123228
2	V2/42/GNR/2018-19	12/Meh/Final/Ref/2017-18 dated 24.3.2018	August 2017	2981051	2981051
3	V2/43/GNR/2018-19	14/Meh/Final/Ref/2017-18 dated 24.3.2018	October 2017	1101852	1101852

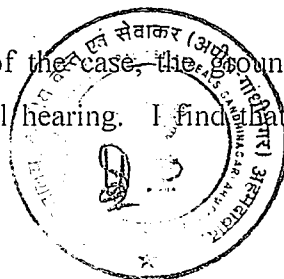
2. Briefly, the facts are that the appellant filed three refund claim for refund of ITC on export of goods and services without payment of integrated tax on 1.12.2017. On 5.2.2018, the adjudicating authority communicated the deficiency vide form GST RFD 03 pointing out that the appellant had not provided online printout of FORM GST RFD 01A along with the refund claim. The appellant thereafter vide his letter dated 13.2.2018 and 22.2.2018, informed that due to technical glitches in the system, they were not able to generate the printout of GST RFD 01A. In the meantime, a show cause notice dated 26.2.2018 was issued to the appellant, copy of which is not enclosed with the appeal papers. The adjudicating authority, after granting an acknowledgement of receipt of refund application dated 24.3.2018, vide Form GST RFD 02, issued a rejection order on the same date in Form GST RFD 06, stating that despite being asked vide deficiency memo dated 15.1.2018, 5.2.2018 and show cause notice dated 26.2.2018 to submit form GST RFD 01A, the appellant in violation of Rule 89(1) and 97A of CGST Rules, 2017, failed to submit the same and therefore his refund application stood rejected. Consequently, vide Form GST PMT 03 dated 24.3.2018, the adjudicating authority ordered re-credit of the amount to credit ledger, on rejection of the refund claims.

3. Feeling aggrieved, by the rejection of the refund claims, the appellant has filed this appeal, raising the following averments:

- that the order rejecting the refund is bad in law;
- that the adjudicating authority had raised the deficiency that online print out of the form GSTRFD 01A was not submitted with the refund claim and that they had vide their reply informed that due to glitches in the system, they were not able to obtain the print out due to problems in portal; that they had submitted a manual copy;
- that it was brought to their notice on 14.4.2018, that the portal was functioning; that they obtained the online printout of the RFD 01A, a copy of which is enclosed.

Personal hearing in the matter was held on 25.10.2018 wherein Shri A R Patel, advocate appeared on behalf of the appellant and reiterated the grounds of appeal and reiterated that the printout was not being generated owing to problems with the system/GST portal.

I have gone through the facts of the case, the grounds of appeal and the averments raised during the course of personal hearing. I find that the primary question for



determination is whether the adjudicating authority was correct in rejecting the refund claim or otherwise.

6. On going the impugned orders dated 24.3.2018, I find that in all these cases the refund claims were rejected on account of the fact that the appellant could not submit the GST RFD 01A, which was to be submitted along with the refund claims as per the circular no. 17/17/2017-GST dated 15.11.2017. The relevant portion of the said circular, states as follows:

*2.3 The application for refund of integrated tax paid on zero-rated supply of goods to a Special Economic Zone developer or a Special Economic Zone unit or in case of zero-rated supply of services (that is, except the cases covered in paragraph 2.2 above and para 2.4 below) is required to be filed in FORM GST RFD-01A (as notified in the CGST Rules vide notification No. 55/2017-Central Tax, dated 15-11-2017) by the supplier on the common portal and a print out of the said form shall be submitted before the jurisdictional proper officer along with all necessary documentary evidences as applicable (as per the details in statement 2 or 4 of Annexure to FORM GST RFD-01), within the time stipulated for filing of such refund under the CGST Act.*

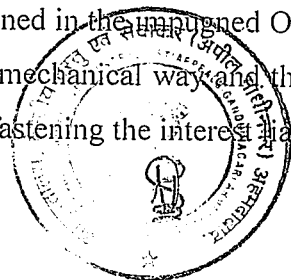
*2.4 The application for refund of unutilized input tax credit on inputs or input services used in making such zero-rated supplies shall be filed in FORM GST RFD-01A on the common portal and the amount claimed as refund shall get debited in accordance with sub-rule (3) of rule 86 of the CGST Rules from the amount in the electronic credit ledger to the extent of the claim. The common portal shall generate a proof of debit (ARN - Acknowledgement Receipt Number) which would be mentioned in the FORM GST RFD-01A submitted manually, along with the print out of FORM GST RFD-01A to the jurisdictional proper officer, and with all necessary documentary evidences as applicable (as per details in statement 3 or 5 of Annexure to FORM GST RFD-01), within the time stipulated for filing of such refund under the CGST Act.*

The appellant has explained the reason for not submitting the same. His correspondence [emails] with GSTN and the *comm. admin* of CGST Gandhinagar Commissionerate enclosed with the appeal papers, clearly shows that there was a problem during the said period in taking printouts of Form GST RFD 01A and that this problem was faced by many of other appellants also. However, subsequent to the rejection of the refund on 14.4.2018, the appellant was able to take a printout of the said GST RFD 01A, which is enclosed with the appeal papers.

7. In view of the foregoing, I find that the primary and only ground on which the refund claims stood rejected was that the he was not in a position to provide a print out of GST RFD 01A. This stands corrected since the appellant has provided a printout of the GST RFD 01A generated by the system. Surely, the appellant should not be punished for the problems/glitches in the portal/system. I am also aware of the fact that in terms of Rule 93(2) of the CGST Rules, 2018, the adjudicating authority has re-credited the electronic credit ledger by an order in Form GST PMT 03 on 24.3.2018.

8. In view of the foregoing, the impugned OIOs No. 12/Meh/Final/Ref/2017-18 dated 24.3.2018, 13/Meh/Final/Ref/2017-18 dated 24.3.2018 and 14/Meh/Final/Ref/2017-18 dated 24.3.2018, rejecting the refund claim on the grounds mentioned in the impugned OIOs, is set aside.

9. Lastly, on going through the appeal papers, I find that the appellant had vide his letter dated 13.2.2018, informed the adjudicating authority about the glitches in the system. However, nothing about this is mentioned in the impugned OIO. I am constrained to add that the impugned order has been passed in a mechanical way and the refund denied to the appellant for no fault of his, thereby unnecessarily fastening the interest liability on the department.



10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the appellant stands disposed of in above terms.

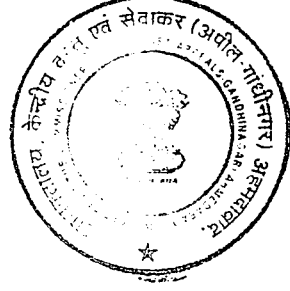
*उमा शंकर*  
(उमा शंकर)

आयुक्त (अपील्स)

Date : 20.12.2018

Attested

*Vinod Lukose*  
(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.



By RPAD.

To,

M/s. Nirajkumar Prabhudas Patel,  
Bright Flame International,  
142, Tirupati Market,  
Opposite C N Commerce College,  
Visnagar -384315

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner, Central Tax, Gandhinagar Commissionerate.
4. The Assistant Commissioner, Central Tax Division- Mehsana, Gandhinagar Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
6. Guard File.
7. P.A.