
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS) CENTRAL TAX		
वस्तु एवं सेवा	GST Building, 7 th Floor,		
कर भवन	Near Polytechnic,		
मालवीमजिलपोलिटेकनिककेपास	Ambavadi, Ahmedabad-		
आम्बावाडी, अहमदाबाद-380015	380015		
079-26305065	टेलिफक्स : 079-26305136		

क फाइल संख्या : File No : V2/5/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-015-18-19**

दिनांक Date : **27.06.18** जारी करने की तारीख Date of Issue:

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 :
01/Supdt./CGST/MEH/2017 दिनांक : 05.02.20108 से सृजित

Arising out of Order-in-Original: 01/Supdt./CGST/MEH/2017, Date: 05.02.20108 Issued by: Superintendent, CGST, Div: Mehsana, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Ghanshyam Industries

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 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- षोबी/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 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 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 होगा।

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,

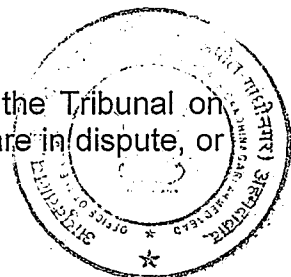
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

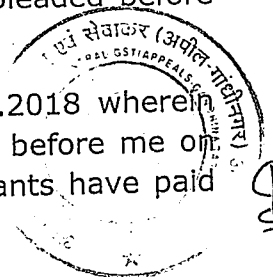
M/s. Ghanshyam Industries, 54/ABC, GIDC, Visnagar (hereinafter referred to as 'the appellants') have filed the present appeal against the Order-in-Original number 01/Supdt./CGST/MEH/2017 dated 05.02.2018 (hereinafter referred to as 'the impugned order') passed by the Superintendent, AR-IV, CGST/Central Excise, Division-Mehsana (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of shaft falling under chapter number 84139120 of Central Excise Tariff Act, 1985 and were holding Central Excise registration number AAGFG6839FEM001.

3. During scrutiny of their ER-3 return pertaining to the period from April 2015 to June 2015, it was found that the appellants had clubbed the balance of 2% Education Cess and 1% Secondary and Higher Education Cess, amounting to ₹5,967/- and ₹2,983/- respectively lying in balance as on 31.03.2015, with the balance of basic excise duty, amounting to ₹1,52,776/- as on 31.03.2015, and accordingly, taken the opening balance of CENVAT credit as on 01.04.2015 as ₹1,61,726/-. It was noticed that the appellants had utilized the same in the quarter of April to June 2015 towards the payment of basic excise duty. As per Notification number 12/2015-CE (NT) dated 30.04.2015, the credit of education cess and higher education cess paid on inputs and input services received on or after the 1st day of March 2015 can be utilized for payment of the duty of excise. Thus, to know the exact amount of credit of education cess and higher education cess paid on inputs and input services received by the appellants before 01.03.2015 (and utilized after 01.03.2015), copies of RG23A Pt. II, of relevant period, were called for. On scrutiny, it was found that out of ₹5,967/- and ₹2,983/- of credit of education cess and higher education cess respectively, ₹4,104/- and ₹2,052/- of credit were taken before and utilized after 01.03.2015. Thus, it was alleged that the appellants had short paid Central Excise duty to the extent of ₹6,156/- (₹4,104/- + ₹2,052/-) for the quarter ending June 2015. Thus, a show cause notice, dated 04.04.2016, was issued to them which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Central Excise duty amounting to ₹6,156/- under Section 11A (1) of the Central Excise Act, 1944. He also ordered to recover interest under the provisions of Section 11AA of the Central Excise Act, 1944. The adjudicating authority further imposed penalties under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 (₹5,000/-) and Rule 8 (3A) of Central Excise Rules, 2002 (₹6,156/- @ 1% penalty on Central Excise duty).

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the impugned order is illegal, bad in law and perverse and without jurisdiction. They claimed that their replies were not taken into consideration. Also, the show cause notice was answerable to the Deputy Commissioner of Central Excise, Mehana Division however, the impugned order was issued by the Superintendent, AR-IV, CGST/Central Excise, Mehana Division. Therefore, they pleaded before me to quash the impugned order.

5. Personal hearing in the matter was granted on 24.05.2018 wherein Shri K. C. Rathod, consultant and Shri Rohan Patel appeared before me on behalf of the appellants. Shri Rathod claimed that the appellants have paid



the duty amount along with interest. In support, he submitted before me copy of GAR-7 and requested for waiver of the penalties.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Looking to their grounds of appeal, I find that the appellants have only one major complaint to lodge which is, the show cause notice was answerable to the Deputy Commissioner of Central Excise, Mehsana Division however, the impugned order was issued by the Superintendent, AR-IV, CGST/Central Excise, Mehsana Division. The said incidence hardly changes the ground reality pertaining to the case. The allegation of the appellants, that their replies remained unheard, is fruitless because they did not submit anything extra which has not been discussed in the impugned order. Further, I find that they have willingly paid the duty along with interest and requested me to waive off the penalties. This is evident enough to conclude that the appellants have accepted their mistake and paid the duty and interest without trying to litigate the issue.

6.1. Now, I would like to discuss their plea to waive off the penalties imposed by the adjudicating authority under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and Rule 8 (3A) of Central Excise Rules, 2002. In view of this, considering the fact that no willful suppression is involved in the case, I would like to confer below the conditions mentioned in Section 11AC of the Central Excise Act, 1944;

Section 11AC: Rationalization of penal provisions:

Non-fraud cases: In cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Excise Act or Rules with the intent to evade payment of duty, in the following manner:

a) Ceiling of 10% of the duty determined under Section 11A(10) of the Excise Act or ₹ 5,000/-, whichever is higher has been incorporated;

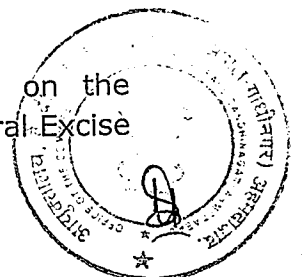
b) No penalty leviable if duty amount and interest is paid within 30 days of issuance of SCN and proceedings in respect of such duty amount and interest shall be deemed to have been concluded;

c) Reduced penalty equal to 25% (i.e. 2.5% of Duty) of the penalty if the duty amount, interest and reduced penalty is paid within 30 days of communication of the adjudicating order.

d) If the duty amount or penalty is increased in any Appellate proceedings, then the benefit of reduced penalty (i.e. 25%) shall be admissible if duty, interest and reduced penalty on such increased amount is paid within 30 days of such Appellate Order.

Now, I find that the entire duty demand has originated from ER-3 return filed by the appellants. However, there is no suppression involved as hold in a number of decisions pertaining to 8 (3A) and for non-payment of duty which is mentioned in the ER-3 return, penalty under Rule 27 of the Central Excise Rules, 2002 is imposable. In this situation, I rely on the citation of Solar Chemferts [2012(276) ELT (273) Tri.-Bom]. In view of the above and in view of the compliance on the part of the appellants, I am inclined to proclaim that no penalty is imposable on the appellants even under Rule 27 of Central Excise Rules, 2002.

7. In view of above, I hereby waive the penalty imposed on the appellants, by the adjudicating authority, under Rule 25 of the Central Excise



Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and Rule 8 (3A) of Central Excise Rules, 2002.

8. The appeal is disposed off as per the discussion held in paragraphs 6.1 and 7 above.

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

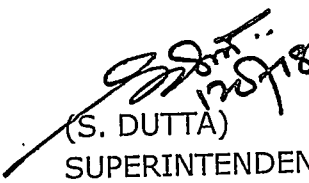
9. The appeal filed by the appellants stands disposed off in above terms.

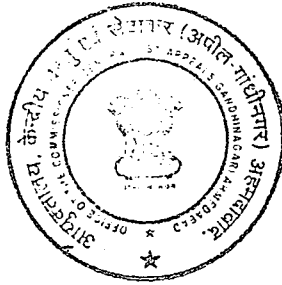
उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. DUTTA)
SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.



To,
M/s. Ghanshyam Industries,
54/ABC, GIDC,
Visnagar-384 315.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Central Tax, Mehsana Division.
- 4) The Superintendent, AR-IV, Central Tax, Mehsana Division.
- 5) The Asst. Commissioner (System), Central Tax, Hq., Gandhinagar.
- 6) Guard File.
- 7) P. A. File.