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|---|---|--|---|
| <br>सत्यमेव जयते | केंद्रीय कर आयुक्त (अपील)   |  |  |
|   | O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  |  |   |
| वस्तु एवं सेवा<br>कर भवन  | GST Building, 7 <sup>th</sup> Floor,<br>Near Polytechnic,<br>Ambavadi, Ahmedabad-<br>380015 |  |   |
| सातवीं मंजिल, पॉलिटेक्निक के पास,<br>आम्बावाडी, अहमदाबाद-380015                                   |   |  |   |
|  079-26305065    | टेलीफैक्स 079-26305136  |  |   |

क फाइल संख्या : File No : V2/56/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-169-18-19

दिनांक Date : 10-01-2019 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 : AHM-CEX-003-ADC-AJS-021-17-18 दिनांक : 28-02-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-021-17-18, Date: 28-02-2018  
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. Hiteshkumar Dhulbhai Patel

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।

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 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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली 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 इए-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 रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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।

(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**

Shri Hiteshkumar Dhulabhai Patel (hereinafter referred to as '*the appellant*'), Proprietor of M/s. Kerala Metal House, Kochi, has filed an appeal against the Order-in-Original number AHM-CEX-003-ADC-AJS-021-17-18 dated 28.02.2018 (hereinafter referred to as '*impugned order*') passed by the Additional Commissioner, Central Excise and CGST, Gandhinagar (hereinafter referred to as '*adjudicating authority*').

2. The facts of the case, in brief, are that M/s. Eva Alu Panel Ltd., Post Dalpur, National Highway No. 8, Taluka-Prantij, Himmatnagar (hereinafter referred to as '*M/s. Eva*') were holding Central Excise Registration number AABCE6705GXM001 and are engaged in the manufacture of aluminium panel sheets falling under the Chapter 76 of Central Excise Tariff Act, 1985 and were availing the credit of Central Excise duty on inputs. During the visit to the factory premises of M/s. Eva, it was found that M/s. Eva were clearing aluminium panel sheets without accounting the same in their regular books of accounts and finished goods register. It was also found that on certain occasions, they had resorted to undervaluation of their finished goods and had collected the differential amount, over and above the bill/invoice value, in cash so as to evade the payment of Central Excise duty leviable on the said manufactured goods. During the search of their premises, some incrementing documents were recovered under a regular panchnama. After completion of investigation, a show cause notice dated 20.01.2014 had been issued to M/s. Eva which was adjudicated by the adjudicating authority vide the impugned order. During the course of investigation, it was found that the appellant was one of the customers of M/s. Eva. The appellant confessed during investigation that he had purchased aluminum panel sheets from M/s. Eva. The appellant could not produce details regarding aluminium panel sheets purchased without bill/in cash from M/s. Eva, as he had destroyed all the evidences when inquiry was getting conducted at the premises of M/s. Eva. However, it was confirmed from the entries made in the cash register that the company of the appellant, M/s. Kerala Metal House, had made cash payment to M/s. Eva against the purchase of aluminum panel sheets in cash without the cover of any invoice. The Directors of M/s. Eva, in their respective statements, had confirmed that they had sold the said goods to the appellant in cash without the cover of invoice. It was further noticed that when the appellant purchased goods from M/s. Eva with invoices, payments were made in cheque and transportation was arranged by M/s. Eva in a normal way. However, when the appellant purchased the goods without invoice, transportation was arranged by the appellant himself and payments were made in cash. After completion of investigation, a show cause notice dated 20.01.2014 had been issued to the appellant. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority imposed penalty of ₹ 1,50,000/- on the appellant, under Rule 26 of the Central Excise Rules, 2002, being the customer of M/s. Eva and knowingly involving himself in the purchase of aluminium panel sheets in cash without cover of invoice and with clear intention to evade the payment of Central Excise duty.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal. The appellant argued that the case against M/s. Eva itself cannot be sustained and therefore, there can be no question of imposition of any penalty against the appellant. The appellant further stated that he had denied in his statement that he had received any goods in cash without invoice. Therefore, there can be no question of imposition of any penalty against him.

4. Personal hearing in the case was granted to the appellant on 27.06.2018, 19.07.2018, 23.08.2018, 11.09.2018 and 10.10.2018 but no one, on behalf of the appellant appeared before me nor was any letter, for adjournment of personal hearing, submitted to me.

5. I have carefully gone through the facts of the case on records and grounds of appeal in the Appeal Memorandums. I find that the appellant has been granted enough chance of personal hearing for representing their case before me. However, as he has failed to avail the benefit of personal hearing, I hereby, take up the matter *ex parte*, purely on the basis of merit and available documents.

6. To begin with, I find that there has been a delay occurred in filing the appeal by the appellant. The impugned order was issued on 28.02.2018 and the appellant has filed the appeal on 21.05.2018. I find that the appeal is delayed by 22 days and the appellant has neither cited any reason for the delay nor submitted any application for condonation of the delay. In view of the above, I reject the appeal on limitation; however, in light of the principle of natural justice, I proceed to decide the case on merit.

7. The very first argument the appellant has placed before me is that as the case against M/s. Eva is not sustainable, there can be no question of imposition of penalty on the appellant. This sounds to be a very juvenile argument on the part of the appellant. How can the appellant be so sure that the case against M/s. Eva is not sustainable! Mere verbal assertion without any documentary evidence has no role to play in the eyes of law. In fact, I have gone through the arguments of M/s. Eva (also filed an appeal before me), where M/s. Eva claimed that the statements of the purchasers cannot be relied upon. On one hand, M/s. Eva doubt the statement of their customers and on the other hand, the present appellant is advocating the innocence of M/s. Eva. I reject the argument of the present appellant outright.

8. In the second argument tabled by the appellant, he has stated that as he had denied in his statement that he had received any goods in cash without invoice, penalty cannot be imposed on him. Again, mere verbal assertion without any documentary evidence has no role to play in the eyes of law. I find that though the appellant has denied having received any goods in cash, he could not give any explanation in respect of the financial transactions, against his firm's name, shown in the file numbered 14 and registers numbering 29, 34 and 35 received from the premises of M/s. Eva (paragraph number 1.12.5 of the impugned order). If he was not involved in cash transaction then why he is mute about the above entries! He has very carefully avoided all the allegations placed against him in the impugned

order. The appellant has not submitted any documentary evidence before me in support of his innocence. His ground of appeal ends in only two paragraphs quoting the above two immature and non sustainable arguments, without any documentary evidence.

9. Now, as the appellant has claimed that the case against M/s. Eva is not sustainable, and hence no penalty can be imposed on him, I, walking on same line, proclaim that as the case of the department, against M/s. Eva, has been upheld by me (vide O-I-A number AHM-EXCUS-003-APP-45-46-18-19 dated 23.07.2018), the appellant is liable for penalty. The activity of the appellant has been uncovered by the statements of the Directors of M/s. Eva and the appellant has been fully exposed. In view of the above, I reject the grounds submitted by the appellant considering them to be flimsy and afterthought.

10. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellant.

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

11. The appeal filed by the appellant stands disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 22/11/19

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,

Shri Hiteshkumar Dhulabhai Patel,  
Proprietor of M/s. Kerala Metal House,  
50/2292-A, Opp. Focus Motors,  
N. H. No. 17, Near railway Station,  
Edapally,  
Kochi-26.

**Copy to:-**

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

