

क फाइल संख्या :File No : V2/45/RA/GNR/2018-19 / L 0 12 1 / 10 12 5

ख अपील आदेश संख्या :Order-In-Appeal No.: <u>AHM-EXCUS-003-APP-195-18-19</u> दिनाँक Date :<u>27-03-2019</u> जारी करने की तारीख Date of Issue: 👌 🕻 . ७ ५ ९ ८ ७ ५

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: 31/CE/REF/AC/18-19 दिनाँक: 05-10-2018 से सृजित

Arising out of Order-in-Original: 31/CE/REF/AC/18-19, Date: 05-10-2018 Issued by: Assistant Commissioner, CGST, Div:Kalol, Gandhinagar Commissionerate, Ahmedabad.

Cofile

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Wonder Packaging Industries

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथिति 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 पूरोक्त 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 मामलें 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.

यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of (c)

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केंडिट मान्य की गई है और ऐसे आदेश जो इस धारा 🗪 मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए नियम के

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.

केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपन्न संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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.

रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/— फीस भुगतान की जाए और ्र-/ 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.

केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35— णवी/35—इ के अंतर्गत:— (1)

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

चक्तलिखित 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, बह्माली भवन, असारवा, अहमदाबाद, गुजरात 380016

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

केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए—3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/— फीस भेजनी होगी। की फीस सहायक रिजिस्टार के नाम से रेखाकिंत 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. Registar 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

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 यथारिथति 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 not withstanding 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.

न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्तू आवेदन या मूल ार्था प्रथास्थिति निर्णयन प्राधिकारी के आदेशाःमें से प्रत्येक की एक प्रति पर *रू.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 beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-l item of the court fee Act, 1975 as amended.

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 in 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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

- धारा 11 डी के अंतर्गत निर्धारित रकम
- सेनवैट जमा की ली गई गलत राशि (ii)
- सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

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:

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

→ 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."
- 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

The Assistant Commissioner, Central G.S.T., Kalol Division, Gandhinagar Commissionerate (hereinafter referred to as 'appellant') has filed the present appeal against the Order-in-Original number 31/CE/Ref/AC/18-19 dated 05.10.2018 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central G.S.T., Kalol Division, Gandhinagar (hereinafter referred to as 'adjudicating authority') in the matter of refund claim filed by M/s. Wonder Packaging Industries, Plot No.C/1/B, 512/13, Phase-I, GIDC, Chhatral Mehsana Highway, Tal-Kalol, Dist-Gandhinagar (hereinafter referred to as 'respondents').

- The facts of the case, in brief, are that the appellants were holding Central Excise Registration number AAAEW9438GXM001 and are engaged in the manufacture of Corrugated Boxes falling under the Chapter 48 of Central Excise Tariff Act, 1985. They were availing the benefit of Notification No. 08/2003-CE dtd. 28,03.2003 as amended during the Financial Year 2008-2009, 2009-2010, and 2010-2011. The officers of Central Excise (Preventive) Ahmedabad-III, on 18.12.2010, intercepted a tempo for verification of bills covering the goods carried by the said tempo. The tempo stated to have been loaded from the factory premises of the appellants under invoice number 215, dated 18.12.2010. The officers visited the premises of the appellants to ascertain the genuineness of the said invoice and had drawn a panchnama dated 18.12.2010 for further proceedings. After completion of investigation, a show cause notice was issued to the appellants and the Additional Commissioner, CGST, Gandhinagar, vide OIO number AHM-CEX-003-ADC-AJS-023-17-18 dated 22.03.2018, had confirmed Central Excise duty of ₹42,88,511/- along with interest and equivalent penalty under Section 11AC of Central Excise Act, 1944. Further, the adjudicating authority appropriated duty, interest and penalty amounting to $\mathfrak{T}9,50,985/-$, $\mathfrak{T}1,28,714/-$ and $\mathfrak{T}2,37,304/$ respectively as deposited by the appellants.
- 3. Aggrieved with the aforesaid order dated 28.05.2014, the appellants had preferred an appeal before the then Commissioner (Appeals-I), Central Excise, Ahmedabad, who vide Order-in-Appeal number AHM-EXCUS-003-APP-173-14-15 dated 24.03.2015 remanded back the case to the adjudicating authority for verification and to re-quantify the demand afresh. The adjudicating authority, after verification and re-quantification of the demand, has passed the impugned order without any change in duty demand with interest and imposition of penalty. Being aggrieved, the appellants had filed an appeal before me and I, vide OIA number AHM-EXCUS-003-APP-09-18-19 dated 15.06.2018, set aside the said OIO and allowed the appeal with consequential relief. On the basis of my above mentioned oIA, the appellants approached the adjudicating authority and filed an application for refund of ₹13,16,463/-, along with interest, on 09.07.2018. The adjudicating authority, vide the impugned order, sanctioned the entire claim of refund

amounting to ₹13,16,463/-..

- 4. The impugned orders were reviewed by the Principal Commissioner of Central Goods & Service Tax and Central Excise, Gandhinagar and issued Review Order number 33/2018-19 dated 15.01.2019, for filing an appeal under section 35E on the ground that the adjudicating authority has not properly verified applicability of unjust enrichment in the refund claim. Thus, the appellant alleged that the impugned order, passed by the adjudicating authority, is erroneous and needs to be set aside.
- **5.** Personal hearing in the matter was conducted on 06.03.2019. Shri R. K. Rathod, the proprietor of the company of the respondents, appeared before me and submitted documents to counter the allegation of the appellant.
- I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the written submission filed by the appellant and oral and written submission made by the respondents at the time of personal hearing. I find that in the entire case, the only allegation tabled by the appellant is that the adjudicating authority has not properly discussed the issue of applicability of unjust enrichment involved in the refund claim. Now, I would like to discuss the issue, mentioned above, at length.
- At the onset, I would like to quote my previous OIA number AHM-EXCUS-7. 003-APP-09-18-19 dated 15.06.2018, wherein I had stressed at the point that the respondents were made to pay duty wrongly in the year 2011. In paragraph 11 of the said OIA, I had set aside the OIO number AHM-CEX-003-ADC-AJS-023-17-18 dated 22.03.2018 and allowed the appeal with consequential relief. So, when the respondents were forced by the officers of Preventive section to wrongly pay an amount in the form of duty, it is highly unlikely that the respondents would pass on the burden of tax somewhere else. In paragraph 11 of the impugned order, the adjudicating authority has very clearly mentioned that the judgment of Hon'ble Allahabad High Court, in the case of CCE vs. U. T. Ltd., is applicable to the present case. The adjudicating authority has reached to the conclusion only after he was satisfied about the same. The allegation of the appellant is not based on any solid information. Simply alleging on the basis of assumption and presumption does not make an argument strong. Mere ifs and buts without any evidence has no ground under the eyes of law and the appellant has failed to submit any evidence to claim that the respondents have passed on the burden of tax. Also, in paragraph 10 of the impugned order, I find that the respondents had submitted a certificate issued by the Chartered Accountant which clearly state that the incidence of tax has not been passed on to any other person by the respondents. It seems that the appellant has missed this particular paragraph by mistake while going through the impugned order. The adjudicating authority seems to be quite satisfied with the said certificate and I too consider the certificate to be quite valuable while deciding the case in terms of unjust enrichment.

8. In view of my above discussions and findings, I clearly find that the incidence

of duty has been borne by the respondents themselves and therefore the doctrine of unjust enrichment is not applicable to the case. Therefore, I do not intend to interfere with the impugned order and reject the appeal filed by the department.

- 9. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।
- 9. The appeal filed by the appellants stands disposed off in above terms.

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.



(S. DUTTA) Noul?

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,
M/s. Wonder Packaging Industries,
Plot No.C/1/B, 512/13, Phase-I, GIDC,
Chhatral Mehsana Highway, Tal-Kalol,
Dist-Gandhinagar.

Copy to:-

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