
 सत्यमेव जयते	केन्द्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर, भुवना सातवीं मंजिल, पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015		
GST Building, 7 th Floor, Near Polytechnic Ambavadi, Ahmedabad-380015		टेलीफोन नं. 079-26305065 टेलीफैक्स 079-26305136	

क फाइल संख्या : File No : V2/184/GNR/2018-19 / 10252 to 10256

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-205-18-19

दिनांक Date : 29-03-2019 जारी करने की तारीख Date of Issue: 01-05-2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

G. file

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : PLN-AC-S.TAX-17/2018
दिनांक : 30-11-2018 से सृजित

Arising out of Order-in-Original: PLN-AC-S.TAX-17/2018, Date: 30-11-2018 Issued by:
Assistant Commissioner, CGST, Div: Palanpur, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Royal Castor Products Pvt Ltd

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।

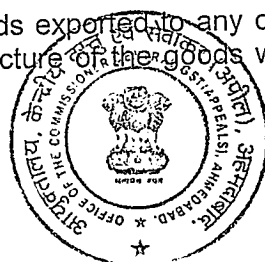
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 हों।

(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, बहुमाली 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.

(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 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 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 scripatoria work if excising Rs. 1 lacs fee of Rs.100/- for each



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ 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 अर्ज़ी 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

M/s. Royal Castor Products Pvt. Ltd., Survey No. 494, 499, 500, 502, At & Post Khali, Tal- Sidhpur (*hereinafter referred to as 'appellants'*) have filed the present appeal against Order-in-Original number PLN-AC-S.TAX-17/2018 dated 30.11.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST & Central Excise, Palanpur Division, Gandhinagar Commissionerate (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellants are engaged in the manufacture of excisable goods viz. Chemipearl, Poly Ricinoleic Acid & refined/Hydrogenated castor oil, crude glycerin etc. and also engaged in receiving services under Transport of goods by road/ Goods Transport Agency service, Work Contract service, Manpower Supply service and Legal Consultancy service. They were holding erstwhile Central Excise registration number AABCR3051JXM001 and erstwhile Service Tax registration number AABCR3051JST001. During the course of audit, it was observed that the appellants had not paid Service Tax on GTA service, during the period 2015-16 and 2016-17, received for export under RCM as per Notification number 31/2012-ST dated 20.06.2012. As the appellants did not agree to the audit objection, a show cause notice, dated 24.05.2018, 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 Service Tax amounting to ₹15,04,000/- under Section 73(1) of the Finance Act 1994 and ordered recovery of interest under Section 75 of the Finance Act 1994. The adjudicating authority, vide the impugned order, also imposed penalty under Sections 77 and 78 of the Finance Act 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the adjudicating authority did not appreciate/discuss the contentions of the appellants. The appellants added that after the amendment of Constitution and introduction of GST laws, it is no longer permissible to commence fresh proceedings under the Finance Act, 1944. They further argued that they had fulfilled all the conditions prescribed under Notification number 31/2012-ST dated 20.06.2012 except non-filing of EXP 2 which is a procedural lapse on their part and non-fulfillment of procedural condition cannot be the basis for rejection of exemption. They requested to set aside the impugned order.

4. Personal hearing in the matter was granted and held on 28.03.2019 wherein Shri S. J. Vyas, Advocate, appeared before me and reiterated the



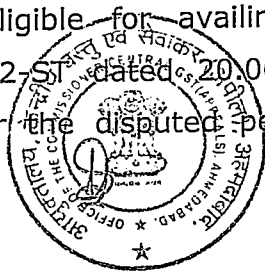
condonable; especially they had filed the same later on. The substantial benefit of input exemption stipulates under the said notifications cannot be denied for such procedural lapse. Further, the notification itself has extended the concessions subject to such conditions and also prescribed the procedure. The filing of declaration/returns has been listed under the procedure. Therefore, I am of the view that late filing of such declaration/returns as per notification is only a procedural lapse, if otherwise not disputed.

6. I further observe that the Hon'ble Tribunal in case of M/s Radiant Textile Ltd [2017 (47) STR- 195 Tri Chan] has taken a decision on similar situation that the substantive benefit cannot be denied on account of procedure/technical lapse. The relevant para is as under:

"9. The facts of the case are not disputed that the appellant is receiving service of overseas commission agent and paying commission to the said agent. The benefit of notification has been denied due to reason that the appellant has not produce BRC and have not filed original copy of invoices and the return form the EXP-1 and EXP-2. In fact, the basic of requirement of notification has not been disputed by the Revenue, therefore, substantive benefit cannot be denied on account of technical lapses has held by the Hon'ble High Court of Bombay in the case of Union of India v. Farheen Texturisers (supra). Further by the Hon'ble High Court of Allahabad in the case of J.S. Gupta & Sons (supra) the payment made to the overseas commission agent not in disputed. The appellant has filed all the shipping bills and copy of invoices issued by the overseas agent. These fact has not been disputed by the Revenue. In that circumstance, I hold that the appellant has complied with the condition of the notification. Further, I observed that the Commission paid to the overseas commission agent is less than 1% of the FOB value of the exported goods. Therefore, the appellant is entitled for benefit under Notification No. 18/2009-S.T. Consequently, no Service Tax can be demanded under the category of 'Business Auxiliary Services' under reverse charge mechanism."

Similar stand has been taken in case of Coromandal Stampings & Stones Ltd [2016 (43) STR 221 (T)] wherein non submission of EXP-1 and EXP-2 have been considered as procedural lapse. I find that in the instant case, these forms have been submitted but after due date, which clearly condonable in view of above citations.

7. In view of above discussion and ratio of the decisions supra, I uphold that the appellants are eligible for availing exemption benefit under Notification number 31/2012-SI dated 20.06.2012 and accordingly, the demand with interest under the disputed period is not sustainable. The



penalty imposed on the appellants is also not sustainable as the demand of Service Tax is not correct and sustainable.

8. In view of foregoing, I set aside the impugned order and allow the appeal filed by the appellants.

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),

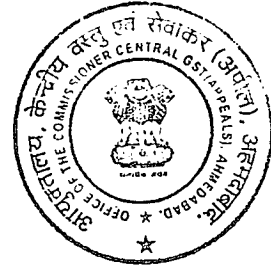
AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 300419

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Royal Castor Products Pvt. Ltd.,

Survey No. 494, 499, 500, 502,

At & Post Khali,

Tal- Sidhpur

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-Palanpur.
4. The Assistant Commissioner (System), HQ, Gandhinagar.
- ✓ 5. Guard file.
6. P.A file.

contents of appeal memo and stated that though EXP 2 was not filed on time, the issue is revenue neutral.

5. 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. At the very onset, I observe that the adjudicating authority has denied the benefit of Notification number 31/2012-ST dated 20.06.2012 on the grounds that the proviso to the said notification clearly stipulates that the conditions prescribed therein is mandatory in nature and strict compliance of the same is required for availing the exemption benefit; that if exemption is available on certain conditions, then the conditions have to be complied with and the mandatory requirement must be fulfilled exactly. He alleged that the appellants had not filed EXP-2. On other hand, the appellants contended that the conditions prescribed under the said Notifications were fulfilled by them and the only lapse on the basis of which the demand was being fastened was not filing EXP-2 return for which substantial benefit cannot be denied due to procedural lapse. For better understanding, I reproduce below the related portion of Notification number 31/2012-ST dated 20.06.2012;

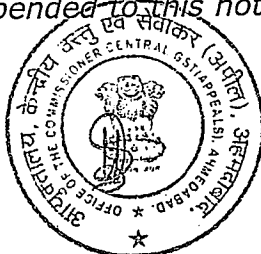
TABLE

Sr. No.	Description of the taxable service	Conditions
(1)	(2)	(3)
1.	<p>Service provided to an exporter for transport of the said goods by goods transport agency in a goods carriage from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or</p> <p>Service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.</p>	<p>The exporter shall have to produce the consignment note, by whatever name called, issued in his name.</p>

Provided that-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1 appended to this notification, before availing the said exemption;



(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (B) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994, for the specified service;

(b) the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) **the exporter availing the exemption shall file the return in Form EXP2**, every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

So, from the above, it may be seen that filing of EXP 2 is one of the conditions, as per the notification. Thus, as is seen from the above, the only ground for denial of benefit of Notifications is that the appellants had not filed the requisite return and I note that admittedly such return in terms of the notification was filed by the appellants later on. The purpose of filing such return is to put the department on notice, as regards the appellant's option to avail the benefit of the notification. Therefore, the documents required to be filed as per conditions prescribed is procedural lapse which is

