
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सततवीमंजिल: पोलिटिकल कलेक्शन के पास आम्बावाडी, अहमदाबाद-380015		
		GST Building-7 th Floor Near Polytechnic Ambavadi, Ahmedabad 380015	
079-26305065		टेलिफैक्स: 079-26305136	

क फाइल संख्या : File No : **V2/13 & 15/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP- 45 & 46-18-19**

दिनांक Date : **23-07-18** जारी करने की तारीख Date of Issue: **16/8/2018**

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-GEX-003-ADC-AJS-021-17-18 दिनांक : **28-02-2018** से सृजित

Arising out of Order-in-Original: **AHM-GEX-003-ADC-AJS-021-17-18**, Date: **28-02-2018**

Issued by: **Additional Commissioner, CGST, Div: RRA, Gandhinagar**
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Eva Alu Panel Limited & Mr. Narayanbhai Amrutbhai Patel (Director of Eva Alu Panel Limited)

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।

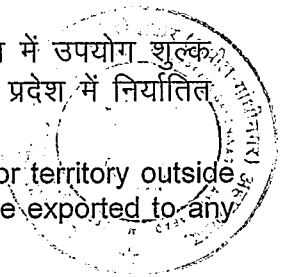
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

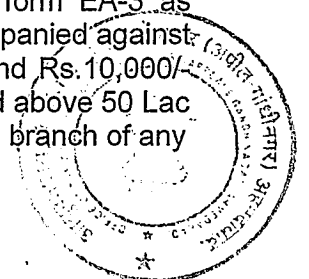
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 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 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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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।

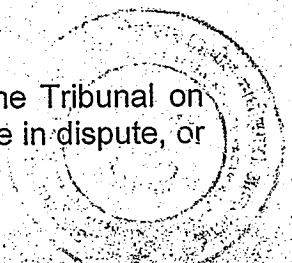
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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।

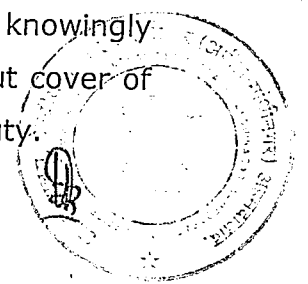
(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Eva Alu Panel Ltd., At & Post Dalpur, National Highway No. 8, Taluka Prantij, Himmatnagar (hereinafter referred to as '*the 1st appellants*') and Shri Narayanbhai Amrutbhai Patel (hereinafter referred to as '*the 2nd appellant*') have 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 the appellants 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 the appellants, it was found that the appellants 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 the appellants. Said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority had passed the order by confirming the demand of Central Excise duty of ₹71,44,406/- under Section 11A of the Central Excise Act, 1944 by invoking extended period of limitation. The adjudicating authority also ordered to appropriate ₹71,44,406/- already paid by the 1st appellants against the confirmed demand. The adjudicating authority further ordered to recover interest under the provisions of Section 11AB of the Central Excise Act, 1944 and ordered to appropriate an amount of ₹5,72,479/- already paid by the 1st appellants. The adjudicating then authority imposed penalty of ₹71,44,406/- on the 1st appellants under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. He further imposed penalty of ₹20,00,000/- on the 2nd appellants, being one of the directors of the company, under Rule 26 of the Central Excise Rules, 2002. Same amount of ₹20,00,000/- each was imposed on the other two directors, viz. Shri Motibhai Raychandbhai Patel and Shri Narendrabhai Ramanbhai Patel, under Rule 26 of the Central Excise Rules, 2002. The adjudicating authority further imposed penalties amounting to ₹1,50,000/- each on Shri Pranav S Shah, Shri Bhaveshkumar N Patel, Shri Babubhai V Patel, Shri Prakash R patel, Shri Hiteshkumar D Patel and Shri Varunbhai B patel, all being the customers of the appellants and knowingly involving themselves in the purchase of aluminium 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, both the appellants preferred the present appeals. The 1st appellants argued that there has been violation of principles of natural justice as the relied upon documents were not recovered from the premises of the appellants but from the labour colony and the documents were maintained by some disgruntled employee. The 1st appellants had the right to cross examine the panchas, investigating officers and the directors of the company which the 1st appellants could not exercise. Also, the adjudicating authority had placed reliance on the statements of their customers/purchasers. However, cross examination of the said purchasers was not allowed. The 1st appellants further argued that Annexure A-1 and A-2 of the show cause notice constitute almost 90% of the demand which is based on the cash book number 29. The department should have examined the person who maintained the cash book, in order to demonstrate its reliability. The cash book is divided in two parts and the period covering both is the same and this cannot be wished away which is clear overlapping in the demand. Regarding the purchasers, the 1st appellants pleaded before me that the statement of the purchasers cannot be relied upon and their cross examination was not granted. The department, according to the 1st appellants, might have coerced the purchasers into making statements as desired by the department.

The 2nd appellant, in his grounds of appeal, claimed that as the case against the 1st appellants is not sustainable, there can be no question of imposition of penalty on him. He argued that there is no record available to demonstrate that he is a key person and was involved in removing, producing, selling etc. of the goods knowing them to be liable for confiscation.

4. Personal hearing in the matter was conducted on 27.06.2018 wherein the 2nd appellant and Shri Chetan K Panchal, Accountant appeared before me and reiterated the grounds of appeals and sought another hearing on 28.06.2018 for submission of additional documents which was granted to them. The appellants submitted unsigned photocopies of cash books pertaining to the relevant period.

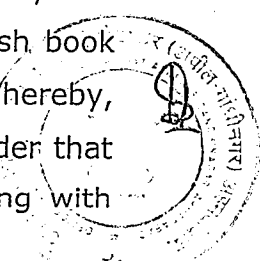
5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellants and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 28.02.2018 and the appellants have filed the appeals on 01.05.2018 claiming in Form EA-1 that they have received the impugned order on 13.03.2018. However, I find that the appeals are delayed by 2 days only and I condone the delay and proceed to decide the case on merit.

6. The very first argument the 1st appellants have placed before me is that the relied upon documents have been recovered from the labour colony and being maintained by certain disgruntled employee and as the 1st appellants were not allowed to cross examine the panchas, investigating officers and the directors; there has been violation of principles of natural justice. This argument sounds to be quite bizarre and stuffed with juvenile excuses. The documents were recovered from the labour colony where their own labours were also residing. This proves that the documents were directly related to none other than the appellants. Regarding

the issue of disgruntled employee, no employer, with rational mindset, would assign any disgruntled employee for safe keeping of sensitive documents. This type of infantile excuses clearly declares that the appellants were involved in *malafide* practice of short/non paying of Central Excise duty. Regarding their argument that they were not allowed to cross examine panchas, investigating officers and the directors; I am unable to find any evidence to show that they applied before the adjudicating authority for the process of cross examination. I find that time and again they have skipped the opportunity of personal hearing awarded to them by the adjudicating authority. Even when they appeared for personal hearing, their approach was quite disorganized and marred by absenteeism. Therefore, in view of the above, I reject their argument that they were denied natural justice by the adjudicating authority.

6.1. In paragraph 7 of the grounds of appeal, the 1st appellants claimed that the adjudicating authority had placed reliance on the statements of the purchasers but did not permit the appellants to cross examine them. Again, did the appellants ask for cross examination? If yes, then why they have not submitted the evidence before me? In paragraph 15 of the grounds of appeal, the 1st appellants claimed that the purchasers cannot be relied upon. That is another childish excuse submitted by the appellants. How can all the purchasers not be relied upon? If their integrity was dubious, then why the appellants had developed commercial relation with them where credit of lakhs of Rupees are a regular feature. Another argument was that the department had coerced the purchasers to make wrong statements. Were the purchasers not aware of their legal rights so as to enable the departmental officers to use coercive method to provide wrong statement? This is a terrible allegation on the part of the appellants which clearly shows their frustration and disappointment.

6.2. In paragraph 8 of the grounds of appeal, the 1st appellants have claimed that the departmental officers have not examined the person who maintained the cash books in order to demonstrate its reliability. It surprises me to a great extent that how the appellants had conducted a successful business for so many years with the help of disgruntled and unreliable employees and unreliable customers. Also, how they are so confident that the investigating officers did not examine the person maintaining cash books. The argument of the appellants sounds to be clear afterthought and is hereby outrightly rejected. Further, regarding the cash book, the 1st appellants claimed that the cash books are not naturally written. That there are two parts of the said cash book concerning the said period. This grotesque argument is simply an effort to mystify the undersigned on the part of the appellants as nobody would maintain such an entry which could confuse even the writer of the account (**cash book "not naturally written"**). Further, the appellants have submitted before me unsigned photocopies of the said cash book which I decline to accept as authentic. In view of the above discussion, I, hereby, reject all the arguments offered before me by the 1st appellants and consider that the adjudicating authority has rightly demanded Central Excise duty along with interest and penalty.

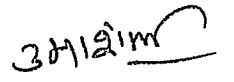


7. Now comes the arguments tabled by the 2nd appellant. The 2nd appellant has claimed that as the case against the 1st appellants is not sustainable, no penalty can be imposed on him. I, walking on same line, proclaim that as the case of the department is being upheld, the 2nd appellant is liable for penalty. The activity of the 2nd appellant has been uncovered by the purchasers and the 2nd appellant lies fully exposed. In view of the above, I reject the grounds submitted by the 2nd appellants considering them to be flimsy and afterthought.

8. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeals filed by both the appellants.

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

9. The appeals filed by both the appellants stand disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. DUTTA) 140818

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,

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