

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

क फाइल संख्या : File No : **V2/44/GNR/2018-19**

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ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-48-18-19**

दिनांक Date : **30-07-2018** जारी करने की तारीख Date of Issue: *20/8/2018*

श्री **उमाशंकर** आयुक्त (अपील) द्वारा पारित

A file

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
PLN-AC-C.Ex-10/2017 दिनांक : **26-03-2018** से सृजित

Arising out of Order-in-Original: **PLN-AC-C.Ex-10/2017**, Date: **26-03-2018** 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. Ambica Sales Corporation

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।

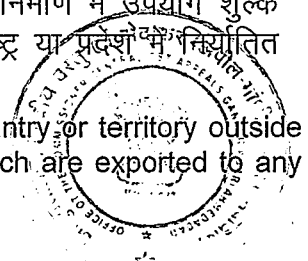
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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- ण0बी/35-इ के अंतर्गत:-

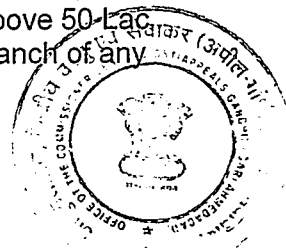
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघानी 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 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 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 (सीस्टैट) 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 63 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 रूपय 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,

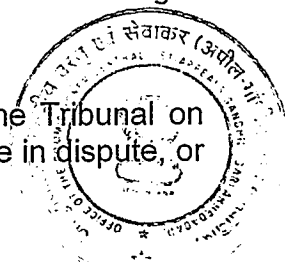
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



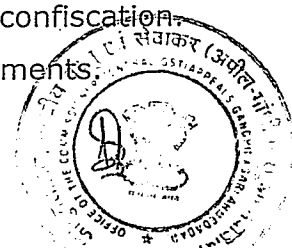
ORDER-IN-APPEAL

This appeals has been filed by M/s Ambica Sales Corporation, Plot No.32/15, New Ganj Bazar, Patan, N G (for brevity-"appellant") against Orders-in-Original No.PLN-AC-CEX-10/2017 dated 26.03.2018 (hereinafter referred to as "the impugned order) passed by the Assistant Commissioner of Central GST, Palanpur Division (hereinafter referred to as "the adjudicating authority").

2. The fact of the case is that during investigation against M/s Anmol Agrotech Industries, Mehsana (for short-M/s Anmol) by the DGCEI officers, it was noticed that they were manufacturing and supplying plant growth regulator and pesticides etc goods to appellant without payment of duty. Accordingly the premises of the appellant was searched and noticed that the goods valued at Rs.1,96,447/- were received by them from M/s Anmol without duty payment documents and lying in their stock account. The DGCEI officer has seized the said goods, as it appeared to be liable for confiscation under the provisions of Central Excise Rules, 2002 (CER). A show cause notice dated 11.09.2014 was issued to the appellant for (i) confiscating the seized goods under Rule 25 of CER; and (ii) imposition of penalty under Rule 26(1) of CER. The said show cause notice was adjudicated by the adjudicating authority, vide OIO No.03/AC/CE/MEH/2016 dated 20.01.2016 by confiscating the seized goods and imposing penalty of Rs.18,118/-. The case was remanded by the Commissioner (Appeals), vide OIA No.AHM-EXCUS-03-APP-153-14-16-17 dated 18.11.2016, to the adjudicating authority to re-determine the value of non-excisable/exempted goods cleared, if any by M/s Anmol during 2013-14 and also for extending benefit under the exemption notification thereof, if any. Vide the impugned order, the adjudicating authority has held that all the goods produced by M/s Anmol are excisable goods, hence they are not eligible to avail the benefit of exemption. Accordingly, the adjudicating authority, vide impugned order has ordered for confiscation of the goods valued at Rs.1,96,447/-, removed by M/s Anmol to the appellant and imposed redemption fine of Rs.49,112/-. He also imposed penalty of Rs.18,118/- under Rule 25 (1) of Central Excise Act.

3. Being aggrieved, both the appellant has filed the present appeal on the grounds that:

- The department has not established as to whether the goods cleared by M/s Anmol are liable for excise duty or otherwise; that if the appellant is not liable for penalty, the confiscation of the seized goods is not justifiable.
- The appellant had not done anything which has rendered liable for confiscation of goods and penalty thereof; penalty will be imposable only when the appellant have done any act with excisable goods which they knew or has reason to believe that such goods were liable for confiscation.
- They relied on various case laws in support of their arguments



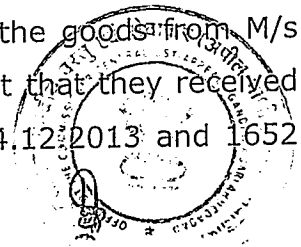
4. A personal hearing in the matter was held on 26.07.2018. Shri Vipul Khandhar, Chartered Accountant appeared for the same on behalf of appellant and reiterated the submissions made in the appeals. He further stated that case against M/s Anmol was decided against them.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing.

6. In the instant case, I observe the background of case booked against the appellant is that the DGCEI officers has booked an offence case against M/s Anmol for wrong availment of SSI exemption benefit under Notification No.03/2003-CE dated 01.03.2013; that they had cleared excisable goods to the tune of Rs.3,61,21,780/- during 2013-14 without obtaining central excise registration and without payment of central excise duty after crossing the prescribed limit of Rs.150 lakhs under the said exemption notification. The DGCEI officers has also seized the excisable finished goods, valued at Rs.11,16,135/- lying in stock at the premises of M/s Anmol, under Rule 25 of CER. Accordingly the adjudicating authority has confiscated the seized goods with an option to redeem the goods on payment of Rs.2,79,100/- and also confirmed the demand with interest and a penalty of Rs.1,37,954/-. As regards case against the appellant, I observe that he is a trader and received excisable goods cleared by M/s Anmol, without payment of central excise duty. It is the contention of the department that the appellant had purchased the said goods, valued at Rs.1,96,447/- from M/s Anmol, though he was aware that the said goods were cleared without payment of proper excise duty amounting to Rs.18,118/- and therefore, the same are liable for confiscation.

7. I further observe that the case was earlier remanded by the Appellate Authority vide OIA dated 18.11.2017 to the adjudicating authority to re-determine the value of non-excisable/exempted goods cleared if any by M/s Anmol during 2013-14 and also for extending benefit under the exemption notification thereof, if any.

8. I observe that the adjudicating authority, in the impugned order, has held that all the goods cleared by M/s Anmol to the appellant were excisable goods and they were not eligible for any exemption under the notification in question during the relevant period i.e 2013-14 in respect of the goods cleared to the appellant. Further, during the course of personal hearing, the Ld. Consultant has admitted the fact that the main case against M/s Anmol has been decided against them. In the circumstances, I do not find any merit in the argument of the appellant that the goods received by them during the relevant period are non-excisable. I observe that there is failure on the part of the appellant in receiving the goods from M/s Anmol. It is an admitted fact by the Proprietor of the appellant that they received the goods in question vide Delivery Challan No.1880 dated 24.12.2013 and 1652



dated 02.12.2013 only and have not received any other documents showing central excise duty payment details or mentioning nil rate of duty vide relevant exemption notification. The goods in question which were found to have been removed from the factory of M/s Anmol without cover of invoices and without evidence of payment of duty is very much liable for confiscation. Therefore, though knowing the facts that the goods received from M/s Anmil were not having any details of duty payment particulars, the explanation given by the appellant that there is no failure on their part does not justify the fact. It is an admitted fact that the goods received by the appellant were excisable goods and received without cover of invoices and duty payment or payable particulars. Therefore, an offence attracting confiscation and imposition of penalty had taken place. In such offence cases, the facts and circumstances of each case will have to be taken into account in the matter of confiscation and penalty. Therefore, the case law cited by the appellant does not advance their case. In the circumstances, the action taken by the adjudicating authority, vide the impugned order is absolutely correct and acceptable in so far as it concerned to confiscation of goods, redemption fine imposed and penalty imposed. Accordingly, I uphold the same and reject the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stand disposed of in above terms.

31/12/18

(उमा शंकर)

आयुक्त (अपील्स)

Date: /07/2018

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeals)
Central Excise, Ahmedabad

R.P.A.D

To

M/s Ambica Sales Corporation,
Plot No.32/15, New Ganj Bazar,
Patan, N G.

Copy to:-

1. The Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Commissioner, Central GST, Gandhinagar
3. The Addl./Joint Commissioner, (Systems), Central GST, Gandhinagar
4. The Dy. / Asstt. Commissioner, Central GST, Palanpur Ddivision
5. Guard file.
6. P.A.

