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

क फाइल संख्या : File No : **V2/16/GNR/2018-19**

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ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-64-18-19**

दिनांक Date : **09.08.18** जारी करने की तारीख Date of Issue:

*29/8/2018*

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

*Copy file*

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-029-17-18** दिनांक : **05-03-2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-029-17-18**, Date: **05-03-2018**  
Issued by: Assistant Commissioner, CGST, Div: Kalol, Gandhinagar  
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

**M/s. Vishakha Poyfab Pvt Ltgd**

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।

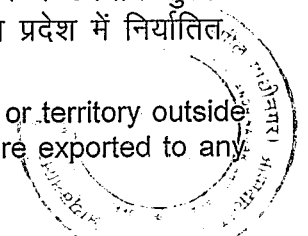
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

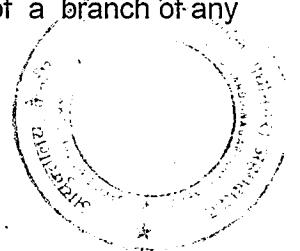
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 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 रेखाकित 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 Appellate 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 (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 43 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,

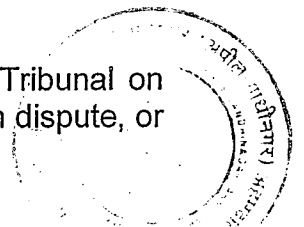
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



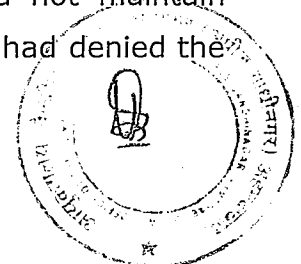
**ORDER**

M/s. Vishakha Polyfab Pvt. Ltd., Plot Number 549/2, Village Vadsar, Kalol (*hereinafter referred to as 'appellants'*) have filed the present appeal Order-in-Original number AHM-CEX-003-AC-29-2018 dated 01.03.2018 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Central GST, Kalol Division, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in the manufacture of multilayered plastic extruded lay flat tubing (both plain and printed), printed bags, printed pouches and zip fresh pouches (for storing vegetables). They also generate waste in all categories and their basic raw material is plastic granules. They were registered with the Central Excise Department having registration number AAACV6439RXM001. The appellants were issued periodical show cause notice for recovery of Cenvat credit of Service Tax wrongly availed on re-engraving cylinders and for recovery of Cenvat credit wrongly availed on returned/rejected duty paid goods received back in their factory premises.

3. It was further noticed that the appellants had continued following the same procedure and therefore, a show cause notice dated 29.03.2016 was issued to the appellants, for the period from April 2016 to September 2016. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority disallowed the Cenvat credit availed by the appellants amounting to ₹14,90,677/- in terms of Rule 16 of the Central Excise Rules, 2002 under Rule 14 of Cenvat Credit Rules, 2004 read with Rule 16 of the Central Excise Rules, 2002 and Section 11A of the Central Excise Act, 1944. He also ordered to recover interest under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944. He further imposed penalty under Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 11AC(1)(a) of the Central Excise Act, 1944.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the impugned order is not proper, legal and sustainable on the ground that it was passed in routine and superfluous manner. The impugned order has been passed beyond the scope of the show cause notice. The show cause notice was issued on the ground that the appellants did not maintain records of return goods whereas the adjudicating authority had denied the

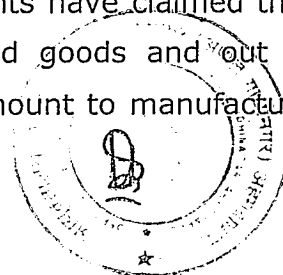


credit on the ground that the appellants had not undertaken any process on return goods. Thus, the appellants argued, the adjudicating authority had framed the ground absolutely different from the ground taken in the earlier show cause notice. Since, the adjudicating authority has set out the ground for adjudication totally different from earlier show cause notice; the impugned order is ex-facia illegal and needs to be quashed aside. The appellants further claimed that they had received back 59149.110 kgs. of finished goods under original or duplicate copy of Central Excise invoices issued by them. Out of the above quantity of the returned goods, 34648.600 kgs. of goods did not amount to manufacture and cleared on payment of duty equal to the CENVAT credit taken on receipt of the returned goods. The appellants also mentioned that the returned goods on their receipt in the factory were separately accounted for in daily stock account and process of doctoring or rewinding or repacking was carried out on such returned goods. In support of their claim, the appellants submitted unsigned copies of daily stock accounts, sample invoices (issued after goods were received back), corresponding invoices initially issued and rejection memo/letters. The appellants further stated that in paragraph 16 of the impugned order, the adjudicating authority incorrectly concluded that the goods were lying till the date (they knew very well there would be no sending out of such goods). However, the appellants had already cleared 34648.600 kgs. of the returned goods from the receipt quantity of 59149.110 kgs. In view of the above arguments, the appellants requested to set aside the impugned order.

5. Personal hearing in the matter was granted and held on 27.06.2018. Shri P. G. Mehta, Advocate, and Shri Bharat Patel, Authorized Signatory, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. Shri P. G. Mehta stated that the appellants had availed credit on the returned goods as per Rule 16(1).

6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing. I now proceed to decide the case as per merit and available records.

7. On going through the arguments of the appellants in their grounds of appeal, in paragraph 14, I found that the appellants have claimed that they had received back 59149.110 kgs. of finished goods and out of which, 34648.600 kgs. of returned goods did not amount to manufacture



and cleared on payment of duty equal to Cenvat credit taken on receipt of return goods. In support of their claim, they submitted before me, **unsigned photocopies of**, daily stock register, sample invoices issued after goods were received back, corresponding invoices initially issued and rejection memo/letters. The above documents need to be thoroughly verified before reaching to a rational conclusion. The adjudicating authority is silent about the documents. It is not forthcoming from the impugned order as to whether these documents have been actually verified by the adjudicating authority before concluding the case. In absence of a proper verification report, it is not possible for the undersigned also to do justice to the case as the appellants too have failed to submit any authentic supporting document. In view of the above, following the doctrine of natural justice, I would like to remand the case back to the adjudicating authority to conduct a proper verification and issue a speaking order afresh taking care of all the lacunae present in the impugned order and the grievance of the appellants.

8. In view of above, I remand the case back to the adjudicating authority for a proper verification of the returned goods. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back. Thus the appeal filed by the appellants is disposed off in above terms.

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

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

*उमा शंकर*  
(उमा शंकर)

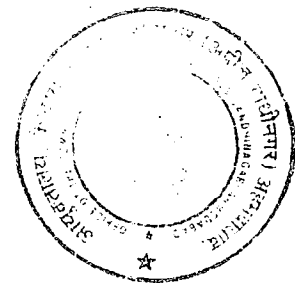
CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 29/08/18

SUPERINTENDENT,

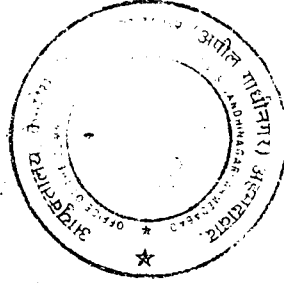
CENTRAL TAX (APPEALS), AHMEDABAD.



To,  
M/s. Vishakha Polyfab Pvt. Ltd.,  
Plot Number 549/2, Village Vadsar,  
Kalol.

**Copy to:**

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



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