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

क फाइल संख्या : File No : **V2/97&98/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP- 69 to 70-18-19**

दिनांक Date : **14.08.18** जारी करने की तारीख Date of Issue:

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 :
09&08/REF/S.TAX/AC/2018-19 दिनांक : **24-04-2018** से सृजित

Arising out of Order-in-Original: **09&08/REF/S.TAX/AC/2018-19**, Date: **24-04-2018**
Issued by: Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Mundra Oil 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।

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.

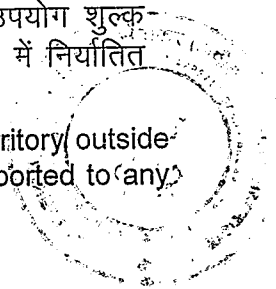
(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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.

Cr. file

5898 to 5902

29/8/2018



- (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:-

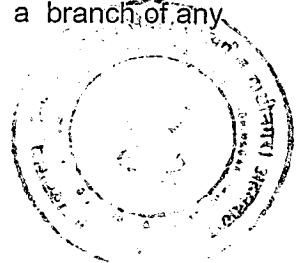
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, 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 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 (सीस्तेत) 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 हैं

- (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,

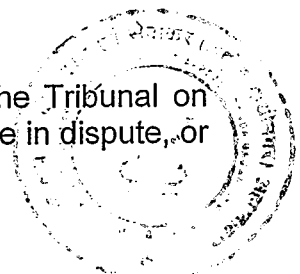
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

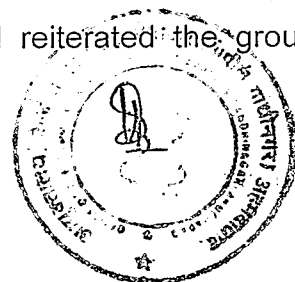
This order arises out of two appeals filed by M/s. Mundra Oil Pvt. Ltd., D-304, Himalaya Royal, Near Khari River, Nagalpar Road, Mehsana-384002 (in short 'appellant') against following Order-in-Original Nos. (in short 'impugned letter') passed by the Assistant Commissioner, CGST Division-Mehsana (in short 'adjudicating authority'). Since the issue involved is common, I take it for disposal by a common order.

Sr. No.	O.I.O.No. & date	Period involved.	Amount involved (Rs.)	Appeal No.
1	09/REF/S.TAX/AC/2018-19 dtd.24.04.2018	Oct-2016 to Dec-2016	2,33,346/-	V2/97/GNR/2018-19
2	08/REF/S.TAX/AC/2018-19 dtd.24.04.2018	July-2016 to Sept-2016	1,65,044/-	V2/98/GNR/2018-19

2. Briefly stated that the appellant filed two refund claim of Rs.1,65,044/- and Rs.2,33,346/- on 22.09.2017 under Notifn. No.12/2013-ST dated 01.07.2013 with the O/O the Asstt. Commr, CGST Division, Mundra for service tax paid on specified services received by SEZ unit or the Developer and used for authorised operations These two claims were returned to the appellant verbally, as stated by the appellant, followed by a letter dtd. 17.01.2018 directing the appellant to approach jurisdictional authority for sanction of said refund claims. However, before that the appellant again filed said refund claims on 09.01.2018 with the adjudicating authority. The adjudicating authority vide impugned orders sanctioned Rs. 11,887/- and rejected the balance claims being time-barred in terms of Condition No.3III(e) of said notifn.

3. Aggrieved with the impugned letter, the appellant filed the present appeal wherein, *inter alia*, submitted that initially the claims filed with the O/O the Asstt. Commr, CGST Division, Mundra were well in time which is also part of CGST; the division and commissionerates have been formulated only for administrative exigencies; that they have their administrative office under the jurisdiction of CGST Division, Mehsana and manufacturing unit at SEZ, Mundra; that they are working under the control of both the authorities and accordingly the refund claims filed before any one of these two authority is as good as it is filed before the proper authority; that they rely on case law viz. CCE Vs. AIA Engineering Ltd. reported at 2011(21) STR-367(Guj.), Lubi Industries LLP vs. UOI reported at 2016(337) ELT-179(Guj.) and Tahanee Heights Co-op. Housing Society Ltd. Vs. UOI reported at 2016(339) ELT-356(Bom.) and requested to set-aside the impugned orders.

4. Personal hearing in the matter was held on 25.07.2018. Shri N.R. parmar, Consultant, appeared on behalf of the appellant and reiterated the ground of



appeals; that services are received by SEZ; that earlier application filed within time and therefore it is not time-barred.

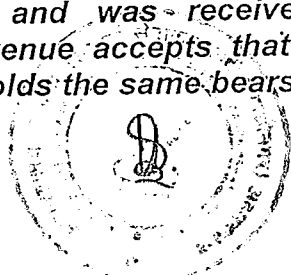
5. I have carefully gone through the appeal memorandums, submission made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the subject refund claims are time-barred or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellant had filed the refund claims quarter wise for the period July-2016 to March-2017 with the O/O the Commissioner, Central Excise & Service Tax, Kutchh (Gandhidham) on 29.09.2017 and the appellant has produced copy of SEVOTTAM Receipt No. 403. I find that the Asstt. Commr, CGST Division, Mundra returned the subject claims to the appellant with oral instruction to file their claims as they are registered with the Asstt. Commr, CGST Division, Mehsana. I also find that the Asstt. Commr, CGST Division, Mundra had issued letter to that effect on 17.01.2017 i.e. after three months from the date of filing claims. However, the appellant had already filed the subject claims with the adjudicating authority on 09.01.2018 i.e. before issue of letter dtd.18.01.2018 by the Asstt. Commr, CGST Division, Mundra. I find that the said Asstt. Commr. CGST, Division Mundra could have transferred the subject claims to the proper jurisdictional CGST division and informed the appellant accordingly instead of returning the claims. I find that it is a settled law that if the matter is pursued before the wrong authority, the period spent in pursuing the issue before the wrong authority has to be excluded for limitation. This view is also supported by the Hon'ble CESTAT, Ahmedabad in case of CCE, Ahmedabad Vs. AIA Engineering Ltd. reported in 2009(248)ELT-826(Tri. Ahmd.) wherein it is held as under:

“Refund - Limitation - Refund claim filed within 60 days of relevant quarter under Notification No. 41/2007-C.E. (N.T.) before Deputy Commissioner of Service Tax instead of filing before Deputy Commissioner of Central Excise - Commissioner (Appeals) observed that original refund claim filed within time and returned by authorities with directions to file it before appropriate authority, the same cannot be said to have been filed beyond limitation period - No infirmity in observation of Commissioner (Appeals) - Subsequent refiling of refund claim beyond limitation period should not be held against assessee - No merit in Revenue's appeal which is dismissed - Section 11B of Central Excise Act, 1944. [paras 2, 3]”

Similarly, in case of CCE, Noida Vs. Kohinoor Enterprises[2011(266)ELT-397(Tri.Del.)], the Hon'ble Tribunal has held as under:

“Refund claim - Limitation - Original refund claim filed on 31-12-2004 and subsequently resubmitted on 28-2-2005 - Revenue contends that claim filed with Superintendent and was received by Deputy Commissioner on 30-9-2005 - Revenue accepts that claim filed in Divisional office on 30-1-2004 but holds the same bears initial of some



person without any mention of name or designation of that person nor bears the stamp of Division office and hence that it cannot be held that it bears acknowledgment of the Division - Contention has no merit - Deputy Commissioner's letter dated 13-1-2005 directing the assessee to resubmit the claim along with relevant documents not doubted by Revenue - Genuineness of claim cannot be doubted - No merit in Revenue's appeal which is rejected - Section 11B of Central Excise Act, 1944. [paras 8, 9]"

Similar view is taken in case of revision application filed by IOC Ltd.[2007(220)ELT-309(GOI)]wherein it is held as under:

"Rebate - Limitation - Relevant date - Time limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted - Section 11B of Central Excise Act, 1944 - Rule 18 of Central Excise Rules, 2002. [paras 8.3, 8.4]"

Accordingly, I set-aside the impugned orders and allow the appeals filed by the appellant holding that 29.09.2017 is the date of filing subject refund claims and the adjudicating authority shall entertain the claims and allow the refund claims, if otherwise in order, after following the principle of natural justice within 30 days of communication of this order.

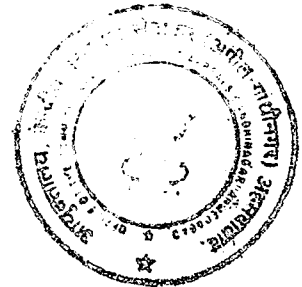
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)
Dt. 14.08.2018

Attested:

B.A. Patel
23/08/18
(B.A. Patel)
Supdt.(Appeals)
Central Tax, Ahmedabad.



BY SPEED POST TO:

M/s. Mundra Oil Pvt. Ltd.,
D-304, Himalaya Royal, Near Khari River,
Nagalpar Road, Mehsana-384002.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division- Mehsana.
- (4) The Asstt. Commissioner(System), CGST, Gandhinagar.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.