
 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सातवीं मंजिल, पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : V2/03/GNR/2019-20 & V2/02/GNR/2019-20 / 10845 to 10851

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-11 to 12-19-20

दिनांक Date : 5/28/2019 जारी करने की तारीख Date of Issue: 31/05/2019

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/AC/HMT/NRM/2018-19 दिनांक : 1/24/2019 से सृजित

Arising out of Order-in-Original: 09/AC/HMT/NRM/2018-19, Date: 1/24/2019 Issued by: Assistant Commissioner, CGST, Div: Himmatnagar, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Airolam 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 प्रक्रिया 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- 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, अपीलों 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 filed 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 और 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 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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:

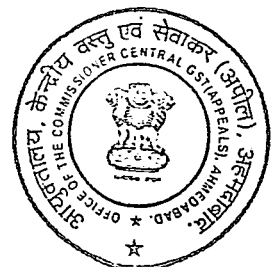
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

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

Following two appeals have been filed against Order-in-Original No.09/AC/HMT/NRM/2018-19 dated 24.01.2019 [hereinafter referred to as "the impugned order" passed by the Assistant Commissioner of CGST, Division-Himatnagar, Gandhinagar Commissssionerate [hereinafter referred to as "the adjudicating uthority"]

S No.	Appeal No.	Appal filed by	Amount involved
1	03/GNR/19-20	M/s Airlom Ltd, Dalpur Village, Dist. Sabarkanta [hereinafter referred to as " the appellant-1 "]	Rs.29,38,280/- Demand Rs.29,38,280/- Penalty
2	02/GNR/18-19	Shri Pravinbhai N Patel, Managing Director of M/s Airlom Ltd [hereinafter referred to as " the appellant-2 "]	Rs.29,38,280/- Penalty

2. On the basis of specific information that the appellant-1 was evading Central Excise duty by suppressing the production and clandestine clearance by resorting to issuing parallel invoices, searches were carried out at the premises of the appellant-1 and their various dealers by the Central Excise Preventive Officers. During searches and further investigation of the case, it was noticed that the appellant had cleared finished goods viz Decorative Laminated sheets illicitly without payment of duty during 2013-14 to 2014-15 as per following details.

S No	Manner of illicit clearance	Value of goods	Duty involved
1	Shortage finished goods by illicit removal	Rs.94,86200/-	Rs.11,72,494/-
2	Goods cleared illicitly on 25 parallel invoices	Rs.98,96,980/-	Rs.12,23,267/- Rs.3,03,124/-
3	Illicit clearance without invoices	Rs.19,36,855/-	Rs.2,39,395/-
	Total	Rs.2,37,72,492/-	Rs.29,38,290/-

Accordingly, a show cause notice dated 03.05.2017 was issued to the appellant -1, demanding Central Excise duty amounting to Rs.29,38,290/- with interest and imposition penalty under Section 11AC of Central Excise Act, 1944 (CEA). The said show cause notice also proposes for imposition of penalty on appellant-2 and dealers who involved in the duty evasion under Rule 26(1) of Central Excise Rules, 2002 (CER). The adjudicating authority has confirmed the demand with interest and imposed penalty equal to the duty amount on appellant-1. He also imposed penalty equal to the duty on appellant-2 and other dealers equal to the duty not paid by them. Being aggrieved, the appellant-1 and appellant-2 has filed the instant appeals.

3 Being aggrieved, the appellant-1 has filed the appeal on the following grounds:

- The adjudicating authority has confirmed the duty without analyzed the evidences available with him to prove the allegations levelled in the show cause notice; that there was not even a single piece of evidence adduced by the investigating authority to prove clandestine removal.



- It is settled law that any clandestine removal is to be corroborated with concrete and tangible evidence; that demand has been confirmed only on the basis of the retracted statement of the Director.
- The adjudicating authority has failed to appreciate that the goods found in short is inclusive in the goods held to be clandestinely removed. But the adjudicating authority has confirmed both the demands which are perverse in the eyes of law.
- They relied on various case laws in favour of their arguments.

4. The appellant-2 has filed the appeal on the following grounds:

- The penalty under Rule 26(1) is imposable only when the person is involved in physical manner such as transporting, removing, depositing etc. That in the show cause notice there was no allegation.
- In any view of the matter, no penalty under the provisions of Rule 26 of CER could be imposed upon the MD of the company when penalty is imposed on the company itself.
- The submitted various case law in their favour.

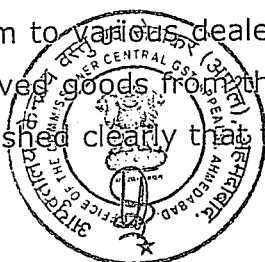
5. Personal hearings in both the appeals were held on 21.05.2019. Shri M.H.Ravel, Consultant appeared for the same and reiterated the grounds of appeal. He further submitted a written submission.

6. I have carefully gone through the facts of the case and submissions made by the appellant-1 and appellant-2 in the appeal memorandum as well as at the time of personal hearings by the Ld. Consultant.

7. First, I take the appeal filed by the appellant-1.

7.1 At the outset, I observe that the case of the department is that appellant-1 had illicitly cleared their finished goods, valued to Rs.2,37,72,492/- and thereby evaded central excise duty of Rs.29,38,280/- and appellant-2 has actively involved in the said illicit clearance. On other hand, the appellant-1 has stated that no corroborative evidence to sustain their allegations and such allegations were merely on assumption, hence no duty can be recovered.

7.2 I find that as per allegation of the department, the appellant-1 has cleared finished goods illicitly as mentioned at para 2 above. I further find that the adjudicating authority has vehemently and categorically described the illicit clearance made by the appellant in the impugned at para 28 to 31. The entire central excise duty evaded in the manner of illicit clearance as mentioned above was admitted by the Managing Director (appellant-2) of the appellant-1. I find that the department had recovered corroborative evidence by recovering duplicate invoices issued for illicit clearance; recovered incriminating documents, evidencing illicit clearance made by them to various dealers/buyers. Statements of authorized persons of dealers who received goods from the appellant-1 were also recorded by the department which established clearly that they had cleared goods illicitly. I find



that the appellant-1 had paid an amount of Rs.26,50,000/- against the total central excise duty of Rs.29,38,280/- evaded. This clearly shows that they admitted all allegations regarding illicit clearance of finished goods. I find that the case laws relied on by the appellant-1 plead the importance of corroborative evidences to establish illicit removal. In the instant case, since the department has brought out corroborative evidences by recovering incriminating documents from the appellant-1 as well as from their buyers and retracted statements of authorized persons of appellant-1 and buyers end, I do not find any merit in applying the ratio of the said judgment to the instant appeals.

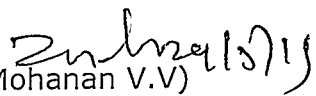
7.3 The appellant-1 has further contended that shortage of goods valued at Rs.94,86,200/- determined by the department has already been covered under parallel invoices recovered by the department. The said contention does not have any merit and parallel invoices for clandestine removal were both mutually exclusive events, as held by the adjudicating authority. Further, this contention clearly shows that they had made clearance illicitly.


7.4 In view of above discussion, I do not find any merit to interfere the impugned order and the adjudicating authority has correctly confirmed the allegations made in the show cause notice and confirmed duty with interest and imposed penalty thereof. Therefore, I uphold the same.

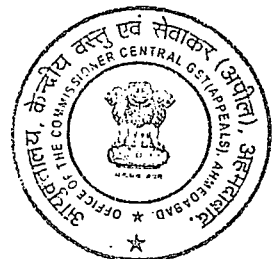
8. As regards the appeal filed by the appellant-2, I find that the said appeal has been filed against imposition of penalty of Rs.29,38,280/- i.e equal to the duty evaded by appellant-1. I find that the involvement of appellant-2, who is the Managing Director, has been clearly established in view of above discussion. His statements have been recorded wherein he has admitted that he has been managing the affairs of the appellant-1 and he was overall person who was responsible for day to day activities of the appellant-1. His role has been clearly admitted in the statement recorded under Rule 14 of the Central Excise Rules, 1944. However, I find that the penalty of Rs.29,38,280/- i.e equal to the duty amount imposed on appellant-1 appears to be much on the higher side under Rule 26 (1) of Central Excise Rules., especially on the grounds that penalty equal to the duty was imposed on the appellant-1 under Section 11 AC of CEA. Accordingly, I reduce the penalty imposed on appellant-2 from Rs.29,38,280/- to Rs. 2 lakhs.

9. In view of above discussion, I partially allow the appeal filed by the appellant-2.

Attested


(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.


(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .05.2019



BY R.P.A.D

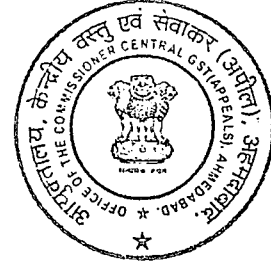
To,

M/s Airlom Ltd,
Dalpur Village, Nannapur Apparooach Road,
Prantij, Sabarkantha. Sabarkanta

Shri Pravinbhai N Patel,
Managing Director of M/s Airlom Ltd
Dalpur Village, Nannapur Apparooach Road,
Prantij, Sabarkantha. Sabarkanta

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Gandhinagar.
3. The Additional Commissioner, CGST, Gandhinagar
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Himatnagar Division.
- ✓ 6. Guard file.
7. P.A file.



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