
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सतवीमंजिल, 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 : **V2/47/RA/GNR/2018-19 / 10799 to 10803**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-3-19-20**

दिनांक Date : **22-05-2019** जारी करने की तारीख Date of Issue:

30/05/2019

G. file

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 : **12/REF/EX/2018-19**
दिनांक : **17-09-2018** से सृजित

Arising out of Order-in-Original: **12/REF/EX/2018-19**, Date: **17-09-2018** Issued by:
Assistant Commissioner, CGST, Div: Kadi, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Suraj Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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- 35बी/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 दूसरा मंजिल, बहूमाली 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 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 scripatoria 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 25) 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 रुपये 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."

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

This appeal has been filed by the Assistant Commissioner of CGST Division, Kadi under Section 35E of Central Excise Act, 1944 [hereinafter referred to as "the department" against Order-in-Original No. 12/REF/EX/2018-19 dated 17.09.2018 [impugned order] passed by the Assistant Commissioner of CGST Division, Kadi [hereinafter referred to as "adjudicating authority"] in case of M/s Suraj Limited, Situated at Survey No. 779/A, Thol, Kadi-Sanand Highway, Tal.-Kadi, Dist.-Mehsana (Gujrat)[hereinafter referred to as "the respondent"].

2. The respondent was issued SCN for clearance of miscellaneous scrap generated during the manufacture of their final product without payment of excise duty amounting to Rs. 11,42,176/-. The said SCN was dropped by the Assistant Commissioner, Kadi Division vide OIO No. 02/AC/DEM/CGST/2017-18 dated 03.10.2017.

2.1 Being aggrieved of the said OIO Department filed an appeal before the Commissioner (Appeals) Ahmedabad, and the said appeal was rejected vide OIA No. AHM-US-003-APP-0231-17-18 dated 27.03.2018. Consequently, the responded filed refund claim of the said amount of duty paid with the jurisdictional Assistant Commissioner, CGST & Central Excise, Division-Kadi, Gandhinagar Commissionerate. The said refund claim has sanctioned vide impugned OIO No. 12/Ref/Ex/2018-19 dated 17.09.2018.

3. Now, the department has filed the instant appeal on the grounds that the JAC has half heartedly examined the claim to the extent of aspect of aspect of unjust enrichment and concluded that the amount of duty is shown in their books of account as "Excise receivable "and has not booked the expense and hence the claim is not hit by the principal of unjust enrichment. Merely such reflection as expense in the books of account is not conclusive in nature and the same has to be considered along with other facts like non-recovery of such taxes from consumers by respondent supported with CA certificate to that effect, no payment of such tax portion by the consumers to the respondent and excluding his excess duty portion while considering tin the cost of goods sold to the consumers and prices remained constant even after payment of such excess duty has been recovered by our company from the consumers. In this regard, the appellant has stated about principles laid down by Hon'ble Supreme Court in the case of Maftlal Industries Ltd. v/s Union of India as reported in 1997(89) ELT247. Further stated that the "to pass the test of Unjust Enrichment the respondent has to satisfy the adjudicating authority on two counts: (i) they have not claimed this amount from their customers and (ii) they have to charged this amount in their Profit & Loss A/c as an expense.



4. The respondent has filed cross-objection against the appeal filed by the department, wherein, inter-alia, stated that they had submitted the ledger accounts to the adjudicating authority, which reflected that the amount of Rs. 11,42,176/- was booked under the head " Excise receivable". The ledger was required to be considered as substantial documentary evidence to establish that the amount of duty of excise in relation to which such refund was not collected from customers and incidence of such duty had not been passed on by him to any other person. Further submitted that the issue related to demand of duty on goods which did not attract duty and hence the question of recovery of duty on goods which did not attract duty and hence the question of recovery of duty from the customers do not arises.

5. Personal hearing in the matter was held on 15.05.2019. Shri Anil Gidwani, Consultant appeared for the same and explained the case. He further submitted CA certificate .

6. I have carefully gone through the facts of the case and submissions made by the department as well as by the respondent. The limited issue to be decided in the matter is relating to "unjust enrichment".

6.1 In the instant cases, to pass the test of "unjust enrichment" in the case of refund, one has to satisfy the two counts:

(i) they have not claimed this amount from their customers and

(ii) they have to charged this amount in their Profit & Loss A/c as an expense.

6.2 The respondent has submitted that the issue related to demand of duty on goods which did not attract duty and hence the question of recovery of duty on goods which did not attract duty and hence the question of recovery of duty from the customers do not arises.

6.3 In the instant case, the respondent paid the duty "under protest", in an issue pointed out by the jurisdictional Range Officer. In this regard, a show cause notice was issued to the respondent. However, the case was decided in favour of the respondent vide OIO No. 02/AC/DEM/CGST/2017-18 dated 03.10.2017. Further, the Department filed an appeal before the Commissioner (Appeals) Ahmedabad and the said appeal was rejected vide OIA No. AHM-US-003-APP-0231-17-18 dated 27.03.2018. Hence the respondent filed the refund claim in question. The recovery of duty from the customer do not arises as the ledger accounts reflected that the amount of Rs. 11,42,176/- was booked under the head " Excise receivable". The ledger has to be considered as substantial documentary evidence to establish that the amount of duty of excise in relation to which such refund was not collected from customers and incidence of such duty had not been passed on by him to any other person.



6.4 Further, in this regard, the respondent has submitted "CA Certificate" which certify that an amount Rs. 11,42,176/- is being reflected in their Books of Accounts/Balance Sheet under the head "Loan & Advances" as "Excise Receivable" and further certify that the said amount has not been passed on to the buyers, nor has been availed Cenvat Credit under CCR,2004.

7. In view of above discussion, I find the respondent has full fill the condition of "unjust enrichment" for the refund claim. In this circumstances, I hold that the contentions of appellant (Department) cannot be accepted and is therefore rejected. The appeal filed by the appellant is disallowed.

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

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: /05/2019

Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D

1. To
M/s Suraj Limited,
Situating at Survey No. 779/A,
Thol, Kadi-Sanand Highway,
Tal.-Kadi, Dist.-Mehsana
2. The Assistant Commissioner of CGST
Kadi Division, 4th Floor Janta Super market,
Near Vepari Jin,, Kalol, Dist.-Gandinagar

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner, System-CGST Gandhinaar.
- ✓ 4. Guard File.
5. P.A. File.