

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सतर्की 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 : **V2/1/RA/GNR/2019-20/12968 To 12972**
- ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-42-19-20**
 दिनांक Date : **10/31/2019** जारी करने की तारीख Date of Issue: **25.11.2019** *Cr file*
 आयुक्त (अपील) द्वारा पारित
 Passed by Commissioner (Appeals) Ahmedabad
- ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **67/Ref/AC/C.Ex-2018-19**
 दिनांक : **04-03-2019** से सृजित

Arising out of Order-in-Original: **67/Ref/AC/C.Ex-2018-19**, Date: **04-03-2019** 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. Balaji Infratech

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.

घ 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, अपीलो 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 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 पढ़ी 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 24) 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."

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- Palanpur, Gujarat under section 35E of The Central Excise Act,1944(hereinafter referred to as "the department"), against Order-in-Original No. 67/Ref/AC/C.Ex.-2018-19 dated 04.03.2019 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Division-Palanpur, Gujarat (hereinafter referred to as the "Adjudicating Authority") in the case of M/s Balaji Infratech, Vill-Merwada, Tal-Palanpur, Dist: Banaskantha (Gugarat)[hereinafter referred to as the "respondent"].

2. The fact of the case, in brief ,are that an offence case was booked by the preventive wing against M/s Balaji Infratech, Vill-Merwada, Tal-Palanpur, Dist: Banaskantha (Gujarat) for clearance of excisable goods i.e PSC Poles, under Central Excise Invoices without payment of duty and the unaccounted excisable goods lying at factory premises valued at Rs. 35,57,450/- was also seized under Panchnama dated 09.06.2015. During investigation , the respondent had paid the duty amounting to Rs. 4,44,681/- along with penalty @15% of the duty amount involved towards the seized goods dated 06.11.2015.A show cause notice dated 07.12.2015 was issued to the respondent for proposing confiscation of seized goods and imposition of penalty .The said show cause notice was adjudicated vide OIO No. 04/AC/CE/MEH/2016 dated 18.02.2016 wherein the seized goods were ordered for confiscation with an option to redeem on payment of fine of Rs. 8,89,370/- and confirmed the duty element of Rs. 4,44,681/- with a imposition penalty of equivalent duty. Being aggrieved, the respondent had filed the appeal and the Commissioner (Appeals) has upheld the said OIO dated 18.02.2016.The respondent filed this appeal with Hon'ble CESTAT ,Ahmedabad which was remanded vide Order No. A/10124/2018 dated 01.01.2018 , to the original adjudicating authority to re-consider the issue afresh after following the principles of natural justice.

3. The adjudicating authority had concluded the remand case vide OIO no. PLN-AC-C.Ex-07/2018 dated 31.10.2018 and refrained from imposing redemption fine in lieu of confiscation of seized goods and the seized goods were released. The department had filed an appeal before Commissioner(Appeal) against the said OIO dated 31.10.2018 and the appeal was rejected vide OIA AHM-EXCUS-003-APP-210-18-19 dated 26.03.2019. At



the same time , the respondent have filed refund claim of Rs. 8,88,370/- of redemption fine which was paid under protest on 13.06.2016 and refund has been sanctioned vide impugned order.

4. Being aggrieved with the impugned order dated 04.03.2019 , the department has filed the instant appeal on the ground that :

- (i) The order passed by the adjudicating authority does not appear to be just and legal .
- (ii) The deemed conclusion provision under section 11AC(1)(d) is specially deals with duty, interest and penalty and the same can not be extended to redemption fine imposed against the confiscated goods.
- (iii) The Board vide Circular No.11/2016-Customs dated 15.03.2016 which deals with Section-28 of the Customs Act,1962 ,clarified that Section 28 applies only to recover of duty or erroneous refund and same can not be extended to different Section from Section 110 to 121 of the Customs Act,1962. Thus non imposition of redemption fine by the adjudicating authority on the ground of demand conclusion of proceedings was without backing of law and sanction of refund of redemption fine is legally erroneous.
- (iv) The adjudicating authority did not take consideration of the judgment of Hon'ble High Court of Madras in the case of NGA Steels(P) Ltd. Vs. CCE Salem/CESTAT-2017(350)ELT51(Mad) wherein it was held that "however, mere payment of duty before issuance of show cause notice would not preclude the department, from levying redemption fine, once the factum of evasion of duty is made out, be it mala fide or not."
- (v) The adjudicating authority failed to appreciate the fact that act of the respondent of non accounting of finished goods in daily stock register i.e RG-1 register and non maintenance of daily stock account, in contravention of Rule-10 of the Central Excise Rules,2002
- (vi) The subject refund did not arise out of order of the Hon'ble CESTAT ,WZB, Ahmedabad dated 01.01.2018 ,had just remanded the case back to adjudicating authority to reconsider the issue without expressing any opinion on the merits of the case and keeping all issue open.



The department has further requested to set aside the impugned order as is not legal and proper.

5. The respondent has filed cross -objection on the appeal filed by the department , wherein ,inter-alia stated that the appeal filed by the department against OIO no. PLN-AC-C.Ex-07/2018 dated 31.10.2018 has been decided vide OIA No. AHM-EXCUS-003-APP-210-18-19 dated 26.03.2019 wherein departmental appeal was rejected and said OIO dated 31.01.2018 was upheld. So, the appeal may be considered in the interest of natural justice.

6. Hearing in the matter was held on 12.09.2019. Shri N.R. Parmar, consultant of the respondent appeared for the same and explained the case. He further submitted an additional submission in this regard for consideration.

7. I have carefully gone through the fact of the case and submission made by the department as well as by the respondent. I find that the department had filed an appeal against OIO no. PLN-AC-C.Ex-07/2018 dated 31.10.2018 wherein the adjudicating authority has refrained from imposing redemption fine in lieu of confiscation as the case was concluded on payment of duty liability & penalty and appeal filed by the department was rejected vide OIA No. OIA AHM-EXCUS-003-APP-210-18-19 dated 26.03.2019 on the ground that the case has been correctly concluded for all proceeding including confiscation under the provision of Section 11AC(d) of the Central Excise Act, 1944.

8. It is also seen from the departmental submission that there is no evidence available on records whether the department has further appealed to higher appellate authority against said OIA dated 26.03.2019. It means that the department has accepted the order. Whereas this appeal has been filed by the department being aggrieved with the refund sanction of redemption fine vide impugned order. The commissioner (Appeal) had passed the order that the adjudicating authority has correctly refrained from imposing redemption fine in lieu of confiscation and rejected the departmental appeal. Whereas the issue before me presently regarding sanction of refund of said redemption fine by the adjudicating authority , I find that as the case had been concluded on payment of duty & penalty and the adjudicating authority has refrained from imposing redemption fine in lieu of confiscation vide OIO dated 31.10.2018. I also find that the commissioner (Appeal) has also accepted the view of original adjudicating authority in OIA dated 26.03.2019 and then the respondent is eligible for the refund of redemption fine imposed in lieu of confiscation . Further, in this case , the departmental appeal filed against the same



respondent does not carry any meaning . Therefore, the respondent's case was correctly concluded under the provision of Section 11AC(d) of the Central Excise Act, 1944 and I uphold the impugned order.

9. The department has relied on the case law in respect of NGA Steels (P) Ltd. Vs. CCE, Salem/CESTAT-2017(350)ELT 51(Mad) wherein it has been held that mere payment of duty before issuance of show cause notice would not preclude the Department, from levying redemption fine. Since the above referred statute clearly provides that all proceedings in respect of the duty, interest and penalty shall be deemed to be concluded in case of payment of said duty, interest & penalty made before issuance of notice or within thirty days of issuance of show cause notice . Therefore, the above case law is not squarely applicable to the instant case.

10. In view of the above, I find that the adjudicating authority has correctly sanctioned the refund of redemption fine imposed in lieu of confiscation .Therefore , I don't find any reason to interfere with the impugned order and up hold the same . The appeal filed by the department is rejected.

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

11. The appeal filed by the appellant is disposed off in view of above discussions and findings.

(GOPI NATH)
COMMISSIONER (APPEAL)
CGST, AHMEDABAD.

ATTESTED

(ATANU KUNDU)
SUPERINTENDENT (APPEAL),
CGST, AHMEDABAD.

BY R.P.A.D.

M/s Balaji Infratech, Vill-Merwada,
Tal-Palanpur, Dist: Banaskantha
Gujarat.

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, CGST Gandhinagar.
3. The Assistant Commissioner, CGST, Division-Palanpur.
4. The Assistant Commissioner, system-Gandhinagar
5. Guard File.
- ✓ 6. P.A. File.



