



आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20211064SW000000A961

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/394/2020 / 14055 78 14059

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-45/2021-22**
 दिनांक Date : **13-10-2021** जारी करने की तारीख Date of Issue 21.10.2021

आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **DC/D.Khatik/08 to 11/CEX/Kadi** दिनांक: **16.09.2020** issued by Deputy Commissioner, CGST & Central Excise, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Shree Damodar Polyfab Pvt Ltd
 Now Amalgamated with M/s Veer Plastics Pvt Ltd
 C-1/18-12, GIDC Estate, Kadi,
 Mehsana

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 :

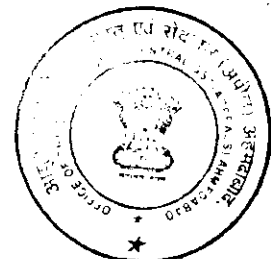
Revision application to Government of India :

(i) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः तनीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौधीमंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(ii) 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.



(क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जोड्यूटीक्रेडिटमान्य 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।

(c) 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 दिनों के सेतीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 घालान 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.

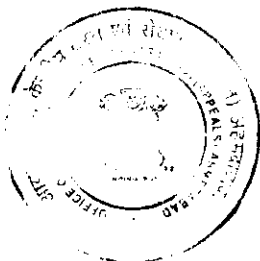
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रु.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (23) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट)के प्रतिअपीलो के मामलोंमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

- (i) (Section) खंड 11D केतहतनिर्धारितराशि;
- (ii) लियागलतसेनवैटक्रेडिटकीराशि;
- (iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇒ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

इसइस 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।

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."



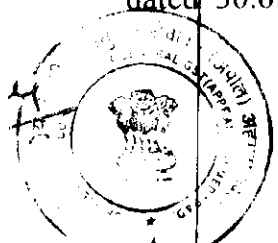
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shree Damodar Polyfab Pvt Ltd, C-1/18-12, GIDC Estate, Kadi, Gujarat (hereinafter referred to as the appellant) against Order in Original No. DC/D.KHATIK/08 to 11/CEX/KADI dated 16-09-2020 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Commissionerate Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was engaged in the manufacture of HDPE Tapes, Fabrics, Sacks and classifying the same under Chapter Heading 3926.90 of the Central Excise Tariff Act, 1985. The department was of the view that the same was classifiable under Chapter 5406.90 and ordered classification accordingly. The order was appealed by the appellant before then Collector (Appeals) who upheld the classification ordered by the department. The appellant approached the Hon'ble High Court of Gujarat against the order of the Collector (Appeals). The Hon'ble High Court stayed the recovery of duty and directed the appellant to approach the Hon'ble Tribunal. In the meanwhile, the appellant was issued nine SCNs demanding differential duty for the period from 10.08.1989 to 31.08.1992.

2.1 The appeal of the appellant was decided by the Hon'ble Tribunal vide Order No. E/426 to E/433/92-D dated 29.09.1992 wherein it was held that the goods were neither classifiable under CSH 5406.90 not under CSH 3926.90 but under CSH 3920.32. The appellant, thereafter, filed two refund claims for amount of Rs.4,25,000/- and Rs.4,65,000/-. Subsequently, they also filed two claims for interest on delayed refunds. The refund claims of the appellant were decided and the refunds were sanctioned but ordered to be credited to the Consumer Welfare Fund on the doctrine of unjust enrichment. Being aggrieved, the appellant preferred an appeal before the Commissioner (Appeals), who vide OIA No. Commr.(A)/29/AHD/97 dated 25.1.1999 and Commr.(A)/015/AHD/99 dated 29.1.1999 set aside the OIOs and allowed the appeals. In terms of the order of the Commissioner (Appeals), the appellant were granted the refund along with interest.

2.2 Further, as the matter was under review and appeal to the Hon'ble Tribunal was proposed, the appellant was issued 4 SCNs all dated 18.03.1999 totally demanding an amount of Rs.13,58,896/- which was erroneously refunded to them. The departmental appeal before the Hon'ble Tribunal was decided vide Order No. A/744/WZB/05/C-1 dated 30.6.2005 and the matter was remanded back to the adjudicating authority for



denovo proceedings in view of the decision of the Hon'ble Supreme Court in the case of Solar Pesticides Pvt Ltd reported at 2000 (116) ELT 401 (SC).

2.3 The 4 SCNs, all dated 18.03.1999, demanding an amount of Rs. 13,58,896/- erroneously refunded to the appellant were adjudicated vide the impugned order and the demand was confirmed and ordered to be recovered from the appellant.

3. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- A. There is gross violation of principles of natural justice as no opportunity of defence not any personal hearing was afforded to them before deciding the case. Except for a reference to their letter dated 27.8.1999, there is no other reply or submission by them because they were never put to notice about the pending SCNs nor that they were proposed to be adjudicated.
- B. The impugned order refer to three letters dated 3.5.2007, 17.5.2007 and 8.6.2007 calling them for a personal hearing. However, they had not received these letters. Further, though the letters for personal hearing are of 2007, the adjudication of the case could not have been concluded in September, 2020 on the basis of hearing proposed 13 years back in 2007.
- C. There is a further violation of principles of natural justice which renders the impugned order and the SCNs liable to be quashed. The SCNs were issued on 18.3.1999 and kept dormant in Call Book and therefore, revival after more than two decades was impermissible and unauthorized un view of the decision of the Hon'ble High Court of Gujarat in the case of M/s.Siddhi Vinayak Syntex Pvt Ltd reported in 2017 (352) ELT 455 (Guj.)
- D. There has been no unjust enrichment as the goods in question were not sold by them and therefore, there was no question of passing on to any other person the incidence of duty deposited thereon. If the price of the final products for the period prior to August, 1989 and after August, 1992 were compared to the price of similar final products during August, 1989 to August, 1992 it would have been clear that the price during such three periods remained the same.
- E. They are now not in a position to establish the above facts as the documents, details for the past period are not available and they had not kept them because the department had not informed them about the 4 SCNs being transferred to Call Book. The presumption of Section 12B of the Act is not applicable in the facts of the present case.



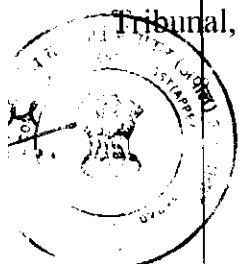
F. The adjudicating authority has erred in passing the impugned order when the issue of unjust enrichment is not decided till date in the remand proceedings ordered by the Hon'ble Tribunal vide Order dated 30.6.2005. While the remand proceedings are pending the adjudicating authority has no authority in law to confirm the demand being amount of refund in the protective SCNs. The fate of the protective SCNs are dependent upon the main proceedings which are still pending.

4. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Amal P. Dave and Shri Sudhanshu Bissa, Advocates, appeared on behalf of the appellant for the hearing. They reiterated the submissions made in appeal memorandum. They further submitted that the principal SCN which was remanded back by the Hon'ble Tribunal was yet to be decided. They were not granted any opportunity for personal hearing before passing the OIO.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and in the course of the personal hearing as well as the material available on record. I find that the appellant were granted refunds in terms of the Order No. Commr.(A)/29/AHD/97 dated 25.01.1999 passed by the Commissioner (Appeals) and subsequently 4 SCNs all dated 18.03.1999 were issued to the appellant, by way of protective demand, seeking to demand and recover the refunds erroneously granted to them.

6. I further find that on the appeal by the Department against Order No. Commr.(A)/29/AHD/97 dated 25.01.1999 of the Commissioner (Appeals), the Hon'ble Tribunal vide their Order No. A/744/WZB/05/C-1 dated 30.06.2005 remanded the matter back to the original adjudicating authority for denovo proceedings in view of the decision of the Hon'ble Supreme Court in the case of Solar Pesticides Pvt Ltd reported at 2000 (116) ELT 401 (SC). I find that the adjudicating authority has at para 16 of the impugned order recorded that '*Subsequent upon receiving the Tribunal's Order dated 30.06.2005, this office had given ample opportunity of personal hearing to the Noticee by calling them for personal hearing*'. However, except for this there is nothing in the impugned order to indicate whether the matter remanded back by the Hon'ble Tribunal for denovo proceedings have been adjudicated.

6.1 The 4 SCNs all dated 18.3.1999 issued to the appellant were for recovery of erroneously granted refund. Unless issue of refund, remanded back by the Hon'ble Tribunal, is adjudicated, the demand for recovery of such refund already granted cannot



be adjudicated. Therefore, conclusion of the adjudicating authority that the refund was erroneously granted to the appellant is not legally sustainable.

7. The appellant have also contended that they were not given opportunity of defence and no personal hearing was also granted to them and therefore, the impugned order is passed in violation of the principles of natural justice. I find merit in the contention of the appellant. The impugned order states that the appellant was called for hearing on 3.05.2007, 17.05.2007 and 08.06.2007 which was not attended by the appellant. The impugned order has been passed on 17.09.2020 i.e. after a substantial period of time from the date when the appellant was last called for a personal hearing. It was bounden upon the adjudicating authority to have given another opportunity of personal hearing to the appellant before adjudicating the case. Since the same was not done, the impugned order has been passed in violation of the principles of natural justice.

8. In view of the above discussions, the order passed by the adjudicating authority needs to be remanded back to the adjudicating authority for deciding the issue afresh, after first adjudicating the refund matter remanded back for denovo proceedings by the Hon'ble Tribunal vide Order No. A/744/WZB/05/C-1 dated 30.06.2005. The adjudicating authority is also directed to give opportunity of personal hearing to the appellant before adjudicating the 4 SCNs all dated 18.03.1999 issued to the appellant.

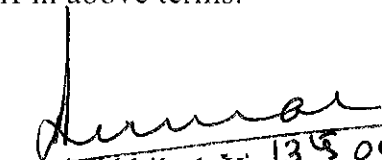
9. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way remand.

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

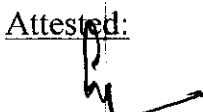
The appeal filed by the appellant stands disposed off in above terms.

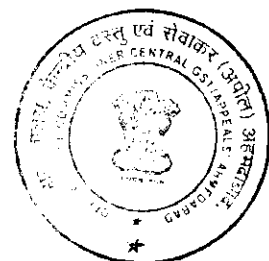
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 10.2021.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To
M/s. Damodar Polyfab Pvt Ltd,
C.1/18-12, GIDC Estate,
Kadi, Gujarat.

Appellant

The Deputy Commissioner,
CGST, Division : Kadi
Commissionerate : Gandhinagar

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.

(for uploading the OIA)

✓ 4) Guard File.

5) P.A. File.

