



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136

E-Mail : commrappl1-cexamd@nic.in

Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/421/2022-APPEAL / ६०९३-९७
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-108/2022-23 and 06.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.02.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-038-21-22 dated 31.03.2022 passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sahajanand Laser Technology Ltd., A-8, GIDC Electronics Estate, Sector 15, Gandhinagar, Gujarat-382028

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

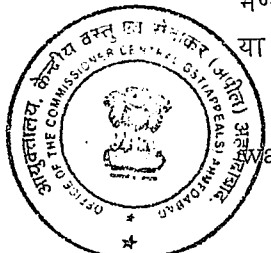
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे 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, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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।

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।

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।

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.

(2) 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 भीतरमूल-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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

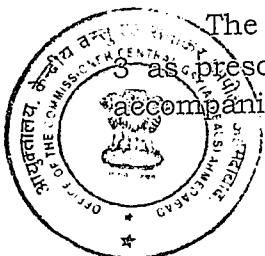
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

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:

- (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.

(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।

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."

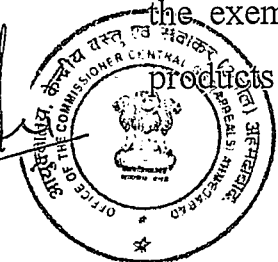


अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Sahjanand Laser Technology Ltd., A-8, GIDC Electronics Estate, Sector-15, Gandhinagar, Gujarat. (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-PBM-038-21-22 dated 31.03.2022 [hereinafter referred to as “*impugned order*”] passed by the Additional Commissioner, Central GST, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant are engaged in manufacture and clearance of Laser system for Metal processing unit and spare parts falling under CETH 85159000, Balloon Mounted Stent and PCTA Catheter (CETH-90183990) ; Aluminium Extruded Profiles (CETH-76020010) etc. and are holding Central Excise Registration No. AAGCS1983BXM002 for the same. They are also registered under Service Tax Registration No.AAGCS1983BST002. During the course of Audit of the records of the appellant conducted for the period Feb.-2010 to October- 2013, it was noticed that the unit was having two sections (1) Manufacturing of laser diamond cutting, planning, shaping and polishing machines and (2) Manufacturing of Coronary Stent System (exempted product) and Vector Balloon Catheter. The Coronary stent system is fully exempt from payment of Central excise duty vide Sr.No.313 of Notification No.12/2012-C.Ex (Old Notification No.06/06) dated 01.03.2012. As they were manufacturing dutiable as well as exempted products, they were following Rule 6(3) of Cenvat Credit Rules, 2002 for exempted clearances.

2.1 Audit further observed that the appellant were having a wholly owned 100% subsidiary unit as M/s Lancer Medical Technology Ltd, 41-New York Tower, S.G.Highway, Ahmedabad. Balance Sheet for the F.Y. 2012-13 reflected that Coronary Stent System (exempted product) and PCTA Catheter (dutiable product) were cleared by the appellant to their 100% subsidiary unit for further sale. It was also observed that these products were cleared under Central Excise Invoices after discharging Central Excise duty (at factory gate) @ 5% or 6% on the exempted products and @ 10% or 12% on the dutiable products. These products were further sold by M/s Lancer Medical Technology Ltd. at a much



higher value in comparison to price at factory gate. Being a 100% subsidiary company, M/s Lancer Medical Technology Ltd. were having direct or indirect relation in business with the appellants as per the definition given in Section 4(3)(b)(ii) & (iv) of the Central Excise Act,1944, hence the valuation was required to be adopted by M/s Lancer Medical Technology Ltd. in terms of Rule 10 read with Rule 9 of the Central Excise Valuation Rules, 2000.

2.2 On the basis of information furnished by the appellant the differential amount of Central excise duty was calculated at Rs.32,51,634/- for the period December, 2010 to March, 2014 and a Query Memo dated 01.01.2014 was issued to the appellant through e-mail. Reply to the Query Memo was submitted on 05.02.2014, however the contentions of the appellant were not found to be satisfactory. Accordingly, Show Cause Notice F.No.VI/1(c)/Audit-I/41/Sahjanand/2015-16 dated 23.12.2015 was issued to the appellant proposing demand and recovery of Central Excise duty amount of Rs.32,51,634/- under Section 11A of the Central Excise Act,1944 (CEA,1944) alongwith interest under Section 11AA of the CEA,1944. Penalty was proposed under Section 11AC(1)(c) of the CEA,1944.

3. The SCN was adjudicated vide OIO No.AHM-CEX-003-ADC-DSN-007-16-17 dated 28.07.2016 by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III who confirmed the demand and interest as proposed in the SCN and imposed penalty amounting to Rs.16,25,817/- on the appellant.

4. Being aggrieved the appellant filed an appeal before the Commissioner, (Appeals-I), erstwhile Central Excise, Ahmedabad who decided the case vide Order-in-Appeal No.AHM-EXCUS-003-APP-051-17-18 dated 25.07.2017. As the appellant had contented that they had not received the Annexure (duty calculation sheet) and Relied Upon Documents (RUD's) alongwith the SCN, therefore, the case was remanded back to the adjudicating authority to decide the issue after according proper opportunity to the appellant.

5. The impugned order was issued in the remand proceedings, wherein the adjudicating authority has confirmed the demand of Rs.32,51,634/- under Section 11A of the CEA,1944 alongwith interest and penalty of Rs.16,25,817/-



was imposed under proviso to clause (c) of sub-section (1) of present Section 11 AC of the CEA,1944.

6. Aggrieved by the impugned order passed by the adjudicating authority the appellant have filed the present appeal alongwith application for condonation of delay.

7. Personal Hearing in the case was held on 09.01.2023. Shri Devashish K. Trivedi, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the application for condonation of delay in filing appeal.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, application for condonation of delay and submissions made during personal hearing. It is observed from the records that the present appeal was filed by the appellant on 02.09.2022 against the impugned order dated 31.03.2022. The appellants have claimed that, they have not received the certified copy of the impugned order till 02.09.2022 and have received only a photocopy on 03.06.2022. Therefore, the period of sixty days for filing the appeal before the Commissioner (Appeals) ended on 02.08.2022 and this appeal was filed on 02.09.2022 i.e after 31 days of expiry of the period of sixty days.

9. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 35 of the Central Excise Act, 1944. The relevant part of the said section is reproduced below :

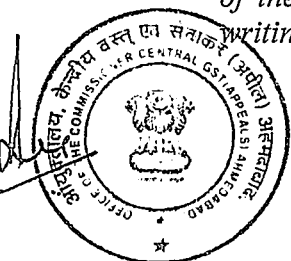
Section 35. Appeals to 1 [Commissioner (Appeals)]. –

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a 2 [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the 3 [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the 4 [Commissioner (Appeals)] 5 [within sixty days] from the date of the communication to him of such decision or order :

6 [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

7 [(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in

writing :



9.1 In the instant case, the impugned order is dated 31.03.2022 and the appellant have admittedly received it on 03.06.2022. Therefore, the period of sixty days for filing the appeal before the Commissioner (Appeals) ended on 02.08.2022. The further period of thirty days, which the Commissioner (Appeals) is empowered to allow for filing appeal also ended on 01.09.2022.

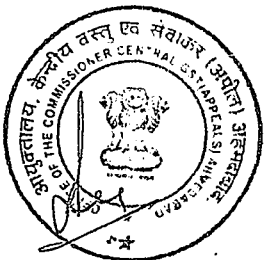
10. In terms of Section 35 of the Central Excise Act, 1944, an appeal before the Commissioner (Appeals) is to be filed within a period of sixty days from the receipt of the order being appealed. Further, the proviso to Section 35 of the Central Excise Act, 1944 allows the Commissioner (Appeals) to condone delay and allow a further period of thirty days, beyond the sixty days allowed for filing of appeal in terms of Section 35 of the Central Excise Act, 1944. The present appeal filed on 02.09.2022, is, therefore, clearly barred by limitation. Since the appeal in the instant case has been filed beyond this further period of sixty days, this authority is not empowered to condone delay in filing of appeal beyond the period of thirty days as per the proviso to Section 35 of the Central Excise Act, 1944.

11. My above view also finds support from the following judgments:-

(i) The Hon'ble Supreme Court in the case of Singh Enterprises reported at 2008 (221) E.L.T.163 (S.C.) has held as under:-

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

(ii) The decision of the Hon'ble Apex Court Judgment has also been relied upon by the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal has held that:-



"5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant."

12. In view of the facts discussed herein above, without delving into the merits of the case, I reject the appeal filed by the appellant on the grounds of limitation.

13. ~~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.

Akhilesh Kumar
6th February, 2022..
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 6th February, 2022

Attested:

(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



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Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Additional Commissioner, Central GST, HQ, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.