आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By Regd. Post

DIN No.: 20221264SW000000ABBA

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/01/2022-APPEAL / 5700-07
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-071/2022-23 and 30.11.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.12.2022
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-MT-001-21-22 dated 23.09.2021 passed by the Joint Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Swastik Sanitarywares Ltd., Plot No. 16, GIDC, Kadi, Mehsana, Gujarat-382715

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 कंर 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 पूवोक्त 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 मे हो माल की प्रकिया 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 2ndfloor, 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-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. Registar 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 ओदश 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 हैं।

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 संषोधित 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 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 in 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 अपीलो 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले 'पूर्व जमा की तुलना मेंए 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) इसं 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

1. This Order arises out of an appeal filed by M/s Swastik Sanitarywares Ltd., Plot No.16, GIDC, Kadi, Dist: Mehsana, Gujarat [hereinafter referred to as "the appellant'] against Order-in-Original No.AHM/CEX/003/JC/MT/001/21-22 dated 23.09.2021 [hereinafter referred to as "the impugned order"] passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant were engaged in manufacture and clearance of excisable goods falling under CETH 69 of the CETA, 1985 and were holding ECC No.AADCS0879BXM001. They were availing the facility of Cenvat Credit under Cenvat Credit Rules, 2004 (CCR-2004). On the basis of data obtained from the Income Tax department and the Registrar of Companies (ROC), a Show Cause Notice bearing No.V.ST/15-40/DEM/OA/2019-20 dated 06.02.2020was issued to the appellant demanding Central Excise duty amount of Rs. 1,15,81,550/- by invoking extended period of limitations alongwith interest and penalties. The SCN also alleged confiscation of goods worth Rs.9,27,82,511/- under Rule 25 of the Central Excise Rules, 2002.

3. The show cause notice was adjudicated vide the impugned orderwherein the adjudicating authority confirmed the demand of Central Excise duty amounting to Rs.71,25,024/- alongwith interest. Penalties were also imposed under Section 11AC of the Central Excise Act, 1944 (CEA,1944) read with Rule 25 of the Central Excise Rules, 2002(CER,2002) and under Rule-12 of the CER,2002.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on following grounds:

(i) The adjudicating authority has confirmed the demand of Central Excise duty on the basis ofthe ITR, value shown in ITR return which is not legal and proper. Relying on the decision in the case of Kush Construction reported in 2019 (24) GSTL 606, they pleaded that in the absence of any corroborative evidence i.e. electricity, raw material purchase details etc. deciding the matter on single evidence of Income Tax returns is not proper and legal.

(ii) The adjudicating authority has not extended the benefits of cum-duty price and /or cenvat credit on purchase invoice if lying with the appellant.

(iii) Penalty imposed on non-filing of returns under CER, 2004 is not applicable on the appellant.

5. Opportunities for Personal Hearing in the case were granted on 08.08.2022, 30.08.2022, 09.09.2022 and 20.10.2022. Mr Naimesh Oza, Advocate, authorized by the appellant, has submitted an additional written submission on 19.10.2022 and sought waiver of personal hearing. He also submitted that since the factory of the appellant is closed since long time, the OIA may be sent to his address.

5.1 Vide the additional written submission, the appellant through their Advocate has submitted that :

(i) The first letter was issued by the department on 14.12.2015 and the second letter was issued after 04 years i.e. on 10.01.2019. Therefore, extended period cannot be invoked as there is no suppression on part of the appellant.

(ii) Penalty of Rs. 7,45,000/- imposed under Rule 12 for the period January-2015 to June-2017 is not sustainable as, vide sub rule 6 of Rule 12 of the CER,2002, an amount has been stipulated to be paid at specific rate with a maximum ceiling of Rs. 20,000/- in case of late filing of returns.

(iii) By virtue of Notification No. 08/2016-CE (NT) dated 01.03.2016, 'Annual Financial Statement' and 'Annual Installed Capacity Statement' were discontinued, therefore, penalty for late filing of these statements/returns for the period 2015-16 to 2017-18 is unwarranted.

(iv) As the duty payment figures for the year prior to the F.Y.2014-15 was not more than Rs.1 Crore, therefore, the appellant are not required to file ER-4 returns for the F.Y.2014-15. Further, as duty involved is less than Rs.1 Crore for disputed period, therefore, Penalty for late filing of return does not arise.

(v) SCN dated 06.02.2020 was issued for the period F.Y.2015-16 to 2017-18. Hence, demand of penalty is beyond 05 years from the date of

SCN. Therefore, penalty cannot be imposed. Reliance placed in judgement reported in 2014(310) ELT 0495 (P&H) and 2015 (320) ELT0533 (P&H).

(vi) Demand was confirmed on the basis of ITR return which is not sustainable as per the following judgements :

- 2010 920) STR 817 in the case of Ramesh Studio;
- 2011 (266) ELT 399 in case of Ravi Foods;
- 2013 (294) ELT 455 in case of Zoloto Industries.
- 2015 (325) ELT 150 in case of Chetak Marmo.

(vii) Suppression of facts had been wrongly invoked in the impugned order and they rely on following decisions in support their claim:

- Decision of the Hon'ble Supreme Court in the case of CCE,Jalandhar Vs. Royal Enterprise ;
- Decision of High Court in the case reported in 2017(349) ELT 13 (Kar);
- Decision of the CESTAT in the case reported as per 2017 (349) ELT 137.

(viii) As there is no suppression of facts, therefore duty confirmed under section 11 A of CEA, 1944 is not proper.

(ix) They preferred the following decisions in support of wrong imposition of penalty under Section 11 AC :

- JaishriEngg.Co.P.Ltd Vs CCE – 1989 (40) ELT 214 (S.C).
- Hi-Life Tapes P.Ltd Vs Collector of Central Excise – 1990 (46) ELT 430 (Tri.)
- Hindustan Steel Vs State of Orissa – 1978 (2) ELT (J 159) (S.C);
- CCE Jalandhar Vs S.K.Sacks - 2008 (226) ELT 38 (P&H);
- Indopharma Pharmaceutical Works – 1998 (33) ELT 548 (Tri.);
- Bhillai Conductors (P) Ltd – 2000(125) ELT 781 (Tri.);
- Tamil Nadu Housing Board – 1994 (74) ELT 9 (S.C).

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum and additional written submission filed by the appellant. I find that the issue before me for decision is, whether the

impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of Central Excise duty amounting to Rs.71,25,024/- by invoking extended period of limitation alongwith interest, and imposing penalties under Section 11 AC of the Central Excise Act,1944 and Rule 12 of the CER,2002, is legal and proper or otherwise. The demand pertains to the period January, 2015 to June, 2017.

7. It is observed from the case records that the appellant was registered with the Central Excise department and had discharged their central excise duty liability till December, 2014 and had also filed their statutory ER-1/ER-4 Returns. However, they did not file the returns since January, 2015 till June, 2017 and had also not paid the central excise duty on clearances of manufactured goods from their factory. This had led to initiation of inquiry by the jurisdictional officers by way of scrutiny of their returns. As the appellant did not submit the documents before the Range Officers, the details were called for and obtained from the Income Tax department and the Ministry of Corporate Affairs and the demands were raised vide the impugned SCN. It is further observed that the appellant had actually made clearances during the period of demand, as is evident from the submissions made before the jurisdictional officers as well as before the adjudicating authority. In the adjudication proceedings, the appellant had produced relevant documents/data pertaining to assessment before the adjudicating authority and the same were thoroughly verified through the jurisdictional Division/Range and the final liability was arrived at Rs. 71,25,024/-which was confirmed and ordered to be recovered under Section 11A (4) of the Central Excise Act, 1994. These are undisputed facts.

7.1. It is further observed that the demand has been confirmed in the impugned order on the basis of data provided by the appellant. Further, the appellant had stopped filing their ER-1/ER-4 Returns from January, 2015 till June, 2017. They had not made any payment of central excise duty during the material period, though they continued to manufacture and clear excisable goods. They also did not respond to the letters as well as summons from the department, which led to the issuance of SCN on the basis of data from Income Tax department as well as from Ministry of Corporate Affairs. Hence, I do not find any merit in the contention of the appellant. The case law of Kush Construction, relied upon by the appellant, is distinguished as in this case there was no denial of manufacture and clearance of excisable goods and that it was the appellant, a registered assessee, who did not

provide any data to the department. Moreover, upon going through the appeal memorandum and additional submission made by the appellant, I find that the appellant had not disputed the quantification of demand confirmed under Section 11A (4) of the Central Excise Act, 1944 vide the impugned order. Therefore, I do not find any reason to interfere with the confirmation of demand, which was done on verification of the information submitted by the appellant.

7.2. As regards the contentions of the appellant regarding cum-duty benefit as well as availment of Cenvat, I find that they had not submitted any documents in support of the same before the adjudicating authority as well as in the appeal memorandum. The same are rejected as being devoid of any merit.

8. As regards the penalty imposed under Rule 12 of the CER,2002, I find that the adjudicating authority has imposed penalty for non-filing of prescribed ER-1 for the period January-2015 to June-2017 amounting to Rs.5,85,000/-, for non-filing of ER-4 for the period F.Y.2014-15, F.Y.2015-16, F.Y.2016-17 and F.Y.2017-18 amounting to Rs.80,000/- and for non-filing of ER-7 for the F.Y.2014-15 to F.Y.2017-18 amounting to Rs.80,000/-. It is the contention of the appellant that the sub-rule (6) of Rule-12 mentions the term "the amount" and not penalty or late fees, as under Section 70 of the Finance Act, 1994. Hence, penalties imposed under Rule – 12 of CER, 2002 is not legally sustainable. It was further contended that vide Notification No.6/2016-CE (NT) dated 01.03.2016, the words "Annual Financial Information Statement" or "Annual Capacity Statement" shall be omitted. Hence, penalty for non/late filing of ER-4 and ER-7 was not imposable for the F.Y.2015-16 to F.Y.2017-18. It was further contended that as they had not paid duty amount of Rs.1 Crore in the F.Y.2014-15, they were not required to file ER-4.

9. It is observed in this regard that, the 'Annual Financial Information Statement'(ER-4) and 'Annual Installed Capacity Statement'(ER-7) were prescribed under Rule-12(2)(a) and Rule-12(2A) of the CER,2002 respectively. However, Notification No.08/2016-CE (NT) dated 01.03.2016 was issued to amend the Central Excise Rules, 2002. The relevant portion of the notification is reproduced as under :

Notification No. 8/2016- Central Excise (N.T) New Delhi,
dated the 1st March, 2016 G.S.R. (E). –

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 2002, namely :–

...

5. In the said rules, in rule 12,
(i) in sub-rule (2), in clauses (a) and (b), for the words "Annual Financial Information Statement", the words "Annual Return" shall respectively be substituted and in sub-clause (a), for the words "statement relates", the words " return relates " shall be substituted;
(ii) in sub-rule (2), after clause (b), the following clause shall be inserted, namely:- "(c) The provision of this sub-rule and clause (b) of sub-rule (8) shall mutatis mutandis apply to a hundred per cent. Export- Oriented Unit.";
(iii) sub-rule (2A) shall be omitted;
(iv) in sub-rule (6), the words "or Annual Financial Information Statement or Annual Installed Capacity Statement" shall be omitted;

....

9.1 In view of the above amendment brought by Notification No. 08/2016-CE (NT) dated 01.03.2016, in the instant case, the appellants were not required to file their 'Annual Financial Information Statement'(ER-4) as well as the 'Annual Installed Capacity Statement'(ER-7) with effect from 01.04.2016. In other words, the requirement for filing both these returns were dispensed with for the F.Y. 2016-17 and F.Y.2017-18 (upto June-2017). It is also observed that the Central Excise duty payment figures for the F.Y 2014-15 for the appellant was less than Rs.1 Crore and the same is also not disputed by the adjudicating authority. Therefore, the appellants were not required to file the 'Annual Financial Information Statement' (ER-4) for the F.Y.2015-16. In view of the above, I find that the penalties imposed under Rule-12 of the CER, 2002 for non-filing of ER-4 for the periods F.Y.2014-15 to F.Y.2017-18 and for non-filing of ER-7 for F.Y.2016-17 and F.Y.2017-18 vide the impugned order is not legally sustainable and is, therefore, set aside.

10. As regards the penalty amounting to Rs. 5,85,000/- imposed under Rule 12 of the CER,2002 vide the impugned order, for non-filing of prescribed ER-1 for the period January-2015 to June-2017, it is the contention of the appellant that sub-rule (6) of Rule-12 of CER, 2002, mentions the term "the amount" and not penalty or late fees, as under Section 70 of the Finance Act, 1994. In order to deliberate this issue, Rules 12 of CER, 2002 is reproduced as under:

Rule 12 Filing of return.-

*(1) Every assessee **shall submit** to the Superintendent of Central Excise a monthly return in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates:*

...

(6) Where any return or Annual Financial Information Statement or Annual Installed Capacity Statement referred to in this rule is submitted by the assessee*

*after due date as specified for every return or statements, the assessee **shall pay** to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each such return or statement.*

(inserted vide Notification No.08/2015-CE(N.T.) dated 01.03.2015)*

I find that, sub rule-1 of Rule 12 of the CER, 2002 mandates the filing of monthly return (ER-1) and emphasizes on the word "shall submit", which puts the onus of following the mandate on the appellant. Moreover, the appellant has not disputed the fact of non-filing of the stipulated ER-1 returns (re-iterated at Para - 3.9 of the impugned order). Further, going by the words of sub rule-6 of Rule-12, I find that the same was made applicable from 01.03.2015 and the statute again emphasizes on the word "shall pay". Moreover, in the era of Self-Assessment, the onus of assessment, duty payment and filing of periodical returns were imposed on the appellant and in the instant case, the appellant has failed to justify their inability to file the mandatory returns/ER-1 for the relevant period. Therefore, as mandated by the statute, the appellant has clearly violated the same and they are liable to pay the 'amount' prescribed thereunder. It is immaterial, whether this is termed as penalty or late fees. When there has been violation on part of the appellant and the governing statute provides for any amount to be paid, the same needs to be paid. I find that the amount has to be paid in terms of sub Rule-6 of Rule-12 of the CER, 2002. Further, sub rule-6 of Rule 12 of the CER, 2002 (as amended) stands applicable from 01.03.2015, therefore, for the period 01.01.2015 to 28.02.2015, the penalty for non-filing of ER-1 returns for this period is not legally sustainable. Hence, I uphold the penalty amount imposed under Rule 12 (6) of the CER, 2002 for non-filing of ER-1 from March, 2015 to June, 2017.

10.1 My views are strengthened by the following judicial pronouncements:

- The CESTAT, WZB, Mumbai, in the case of Uneesha Chem Pvt. Ltd. Vs Commissioner of Central Excise, Raigad [2019 (370) E.L.T. 533 (Tri. - Mumbai)] had pronounced that :

...

5. *The contention .... **Rule 12(6) stipulates the payment of an amount for late filing which is not penalty but is a fee for regularization and hence reliance on the decision of Tribunal in the case of Anil Products Ltd. v. Commissioner of Central Excise, Ahmedabad [2011 (274) E.L.T. 431 (Tri.-Ahmd.)] is misplaced. Turning to his contention that the said rule is not invocable for non-filing of returns, it is not in dispute that these returns have not been, should have been and would have to be filed at some point of time; that the appellant has not yet filed those returns indicates that gross disregard for the law. Necessarily as and when those returns are filed, all of them would stand delayed by more than 200 days from due date; consequently, Rs. 20,000/- will apply. Hence, there is no requirement to set aside the demand for this fee in the impugned order...***

➢ The CESTAT, WZB, Mumbai in the case of Maruti Fertochem Ltd. Vs Commissioner of C.Ex., Cus. & S.T., Nagpur [2018 (364) E.L.T. 631 (Tri. - Mumbai)] had ruled that :

...

> *6. Admittedly, two of the returns, namely, for June 2015 and October 2015 had not been filed on time.* ***The pendency of dispute does not in any way affect the responsibility of complying with the provisions of Central Excise Rules once the registration has been obtained. Having failed to do so; the penal consequences must follow.*** *However, there is no requirement for imposing penalty for the period pertaining to the one before the registration is taken up. Accordingly, penalty for late filing of returns is limited to ` 40,000/-*

...

11. Regarding the issue of confirming the demand by way of invoking extended period of limitations, it is observed that during the period January, 2015 to June, 2017, the appellants have not filed their statutory Central Excise Returns i.e. ER-1/ ER-4 and/or ER-7 (as applicable from time to time) in terms of Rule 12 of the CER, 2002. They had continued to manufacture and clear the excisable goods without payment of central excise duty during the period. In the era of self-assessment, it is the responsibility of the appellant that they correctly assess their duty liability and inform the department through the ER-1 Returns of their assessment and payment of duty. The appellant has failed on both the counts. It was only during the course of investigation by way of scrutiny of the returns by the jurisdictional officers that their lapse was noticed, which led to the correspondences with them. Subsequently, they had submitted the figures for clearance value, sales etc. vide letter dated 17.06.2020 and vide email. It is also observed that during the relevant period i.e. January, 2015 to June, 2017, the appellants have filed their statutory statements/returns with the Registrar of Companies (ROC) as well as with the Income Tax Department. A comparison of the data/figures filed by the appellant before Central Excise (vide their letters), Income Tax and Ministry of Corporate Affairs is as per the table below:

Table

Sr. No	Financial Year	Clearance Value as per letter from the Appellant (In Rs.)	Value as per Income Tax Returns (in Rs.)	Value as per Balance Sheet filed with the Registrar of Companies (in Rs.)
1	2014-15 (Jan-2015 to Mar-2015)	1,70,41,045	0	3,69,61,515
2	2015-16	3,40,74,432	0	5,05,81,828
3	2016-17	0	0	0
4	2017-18 (Mar-2017 to June-2017)	0	0	20,81,326

From the above, it is clear that for same period, the appellant have declared different clearance value figures before different authorities. No explanation has been offered for this discrepancy. This inconsistency on part of the appellant is deliberate and with an intent to evade Government duties/taxes. Therefore, I find that there is no merit in the contention of the appellants and is held that the invocation of extended period of limitation by the adjudicating authority in terms of Section 11A (4) of the Central Excise Act, 1944 vide the impugned order is justified and legal.

11.1 For the above findings, I also rely on the following decisions:

- The CESTAT, SZB, Bangalore in the case of Tungabhadra Special Products Vs Commr.of Cus., C.Ex. & S.T., Belgaum [2018 (364) E.L.T. 147 (Tri. - Bang.)] ruled that :

  ...

  6.4 From the records of the case, we also find that the appellants have contravened the provisions of Rules 8, 17 of Central Excise Rules, 2002 by way of non-maintenance of account relating to production, description and removal of goods into DTA and have also not filed ER-2 Returns for the months from April, 2003 to June, 2006 and therefore, we hold that extended period is correctly invoked; ... We hold that penalty in terms of Section 11(AC) was however be equivalent to such duty are re-determined.

  ...

  7. In view of the above...The appellants shall pay the duty as calculated by the original authority along with interest and equal penalty under Section 11(AC) of Central Excise Act, 1944.

- The Hon'ble Supreme Court of India in the case of UOI Vs Dharmendra Textile Processors on 29.09.2008 [2008 (231) E.L.T. 3 (S.C.)] held that :

  ...

  5....This is clear from the extended period of limitation permissible under Section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed.

  ...

  13. It is a well-settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

  ...

12. As regards the argument of the appellant that the demand for the period April, 2014 to December, 2014 stands time barred, it is observed that while calculating the demand of duty vide the Show Cause Notice dated 06.02.2020 (Annexure-A of the SCN), a deduction of Rs. 55,13,281/- was allowed from the value declared in the Balance Sheet (F.Y. 2014-15), being home clearance figures

upto Dec-2014. Therefore, the contentions of the appellants are devoid of any merit and is liable for rejection.

13. In view of the discussions made above, I uphold the confirmation of demand in the impugned order amounting to Rs. 71,25,024 /- along with interest and penalty. The impugned order is set aside as regards imposition of penalty under Rule-12 of the CER, 2002 for non-filing of ER-1 for January, 2015 to February, 2015, ER-4 for the periods F.Y. 2014-15 to F.Y.2017-18 and for non-filing of ER-7 for F.Y. 2016-17 and F.Y. 2017-18.

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

30th November, 2022

(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 30th November, 2022

Attested

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

To,

By Regd. Post A. D

M/s Swastik Sanitarywares Limited,
Plot No.16, GIDC, Kadi,
Dist. Mehsana

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Addl./Joint Commissioner, CGST & Central Excise, Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST Appeals, Ahmedabad.
5. Guard file
6. PA File