



सत्यमेव जयते

आयुक्त ( अपील ) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065- टेलिफैक्स 07926305136



DIN:20230364SW0000435203

### स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/224/2022-APPEAL 198-102
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-210/2022-23  
दिनांक Date : 24-03-2023 जारी करने की तारीख Date of Issue 30.03.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 36-43/AC/D/2021-22/KMV दिनांक: 14.03.2022,  
issued by Assistant/Deputy Commissioner, Division-IV, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

#### 1. Appellant

M/s Transformers & Rectifiers (India) Ltd.,  
431/P and 427/1/P, Sarkhej Bavla Highway, Village:Moraiya,  
Tal: Sanand, Dist: Ahmedabad-382213

#### 2. Respondent

The Assistant Commissioner, CGST, Division-IV, Ahmedabad North, 2<sup>nd</sup>  
Floor, Gokuldharm Arcade, Sarkhej-Sanand, Ahmedabad - 382210

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 :

(1) केंद्रीय 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 प्रकिया 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 मामलों 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 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।

(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 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-बी/35-इ के अंतर्गत:-

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

(क) 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 Appellate 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 अनुसूचि-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 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

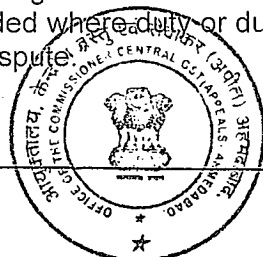
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

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.



ORDER-IN-APPEAL

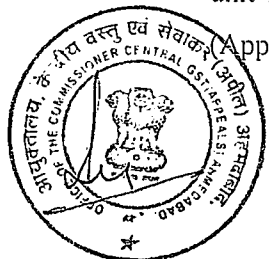
The present appeal have been filed by M/s. Transfórmer & Rectifiers (India) Ltd., 431/P and 427/1/P, Sarkhej Bavla Highway, Village: Moraiya, Tal: Sanand, Dist: Ahmedabad – 382213 (hereinafter referred to as “the appellant”) against Orders-in-Original Nos. 36-43/AC/D/2021-22/KMV dated 14.03.2022, issued on 16.03.2022, (hereinafter referred to as “the impugned orders”) passed by the Assistant Commissioner, Central GST & Central Excise, Division IV, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are engaged in production and clearance of Electrical Transformers, falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AACCT8243PXM003. During the course of audit of the record of appellant, it was observed that they were collecting freight and insurance charges from their customers, which was more than the actual cost of freight and insurance incurred by them for the clearance of goods. It was further pointed out that such excess amount collected by the appellant was required to be included in the transaction value of the goods cleared by them.

2.1 Thus, it appeared that there is an additional flow of the said amount from their customers to the appellant in connection with the said goods, which forms a part of the 'transaction value' in terms of the definition provided under sub-section (3)(d) of Section 4 of the Central Excise Act, 1994. The non-inclusion of the said excess amount in the assessable value of the goods has resulted in short payment of excise duty, which is required to be recovered from the appellant under Section 11A(1) of the Central Excise Act, 1994.

2.2 Earlier, various Show Cause Notices were issued to the appellant's another unit having Central Excise Registration No. AACCT8343PXM002 involving the same issue. Out of the same, the SCN No. V.85/15-67/Dem/06 dated 20.04.2007 involving demand of Rs. 14,59,934/- and Show Cause Notice No. V.85/15-88/Dem/07 dated 19.12.2007 for Rs. 10,99,140/- were decided by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-II vide Orders-in-Original No. 69-70/ADC/2008/PRC dated 21.08.2008 confirming the demand of Central Excise duty total amounting to Rs. 25,59,074/- along with interest and penalty.

2.3 Being aggrieved with the above OIOs dated 21.08.2008, the said appellant's another unit filed an appeal before the Commissioner (Appeals-I), Ahmedabad. The Commissioner (Appeals-I) vide his Order-in-Appeal No. 179/2009(AhdII)CE/D/Commr(A)/Ahd, dated



18.04.2009, upheld the said OIOs dated 21.08.2008 and rejected the appeal of the appellant's another unit. The appellant's another unit had filed appeal before the Hon'ble Tribunal, Ahmedabad, as being not satisfied with the Order in Appeal dated 18.04.2009. The Hon'ble CESTAT, Ahmedabad vide its Order No. A/579/WZB/AHD dated 17.03.2011, allowed the appeal of the appellant's another unit and set aside the order of the Commissioner (Appeals-I), Ahmedabad. The Hon'ble CESTAT in their order held that excess collection of freight and insurance cannot be included in the assessable value.

2.4 The Department has not accepted the decision of the Hon'ble CESTAT, Ahmedabad and the department filed a Civil Appeal No. 26995 of 2011 (converted to CA No. 8476 of 2011) before the Hon'ble Supreme Court of India against the Hon'ble CESTAT's Order No. A/579/WZB/AHD/2011 dated 17.03.2011.

2.5 During the intervening period and while pendency of the appeal before the Hon'ble Supreme Court, the appellant continued the same practice of charging higher freight without any scientific method of costing and without incurring the same with an intent to suppress the transaction value and escape that amount from the levy of Central Excise duty. Therefore, following periodical Show Cause Notices were also issued to the appellant:

Sr. No.	SCN No.	SCN Date	Amount (in Rs.)
1	V.85/15-22/OA/2013	30-03-2013	7,44,161/-
2	V.85/15-67/OA/2013	17-06-2013	9,30,728/-
3	V.85/3-129/D/2013	25-03-2014	3,71,387/-
4	V.85/15-117/OA/2014	20-10-2014	6,99,567/-
5	V.85/03-04/D/2015-16	24-04-2015	3,96,613/-
6	V.85/03-46/D/2015-16	11-02-2016	64,305/-
7	V.85/03-11/D/2016	25-04-2016	2,12,042/-
8	V.85/03-06/D/2017-18	28-12-2017	11,63,170/-
		<b>Total</b>	<b>45,81,973/-</b>

2.6 Since the department had filed a petition before the Hon'ble Supreme Court of India in case of similar issue of the appellant and decision was pending, all the above Show Cause Notices were transferred to call book and kept in abeyance till the outcome of the decision of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has decided the Civil Appeal No. 21847 of 2017 in the case of the Commissioner of Customs, Central Excise & Service Tax, Bilaspur Vs. M/s Nalwa Steel & Power Ltd. and others along with the captioned CA No. 8476 of 2011 vide order dated 06.02.2019, wherein the Hon'ble Supreme Court of India held that "Special Leave Petitions are dismissed as not pressed on the ground



of low tax effect. Further, it was held that it is made clear that the question of law is left open.”

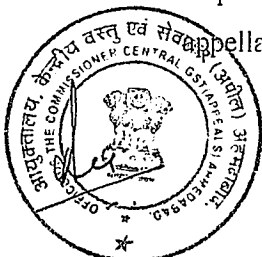
2.7 Subsequently, the adjudicating authority has decided all the aforesaid eight show cause notices vide the impugned orders confirming the demand Rs. 45,81,973/- under Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AB of Central Excise Act, 1944 and penalty of Rs. 45,81,973/- was also imposed on the appellant under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned orders, the appellant have filed this appeal under Section 35 of the Central Excise Act, 1944 on 25.05.2022. However, it is observed that they have submitted Form GST DRC-03 dated 10.06.2022 for the amount @ 7.5% of Central Excise duty confirmed as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 along with their appeal.

3.1 The CBIC has, consequent to the rollout the integrated CBIC-GST Portal, vide Circular No. 1070/3/2019-CX dated 24.06.2019 directed that from 1<sup>st</sup> July, 2019 onwards, a new revised procedure has to be followed by the taxpayers for making arrears of Central Excise & Service Tax payments through portal “CBIC (ICEGATE) E-payment”. Thereafter, CBIC, vide Instruction dated 28.10.2022, issued from F.No. CBIC-240137/14/2022-Service Tax Section-CBEC, also instructed that the payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act, 1944.

4. Further, I find that in terms of Section 35F of the Central Excise Act, 1944, *“the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal (i) under sub-section (1) of Section 35, unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute”*.

5. Therefore, the appellant, vide letter dated 15.12.2022, were requested to make the pre-deposit in the above appeal, in terms of Board’s Circular No. 1070/3/2019-CX dated 24.06.2019 and submit the document evidencing payment within 10 days of the receipt of the said letter. It was also informed to the appellant vide the said letter that failure to submit evidence of pre-deposit would result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. As no reply was received from the appellant in response to the aforesaid letter dated 15.12.2022, vide another letter dated 05.01.2023, the appellant were again informed to submit the proof of pre-deposit paid in the above appeal

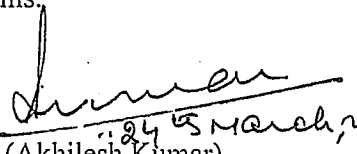


within a week time and also informed that failure to submit evidence of pre-deposit would result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. However, till date, the appellant have not submitted any intimation or proof of the payment of the said pre-deposit, if any, made by them. Hence, the appellant have failed to comply with the requirement of payment of pre-deposit.


6. The Commissioner (A) shall not entertain any appeal unless the appellant have deposited 7.5% of the duty (where duty or duty and penalty are in dispute) or 7.5% of penalty (where the penalty is in dispute) under Section 35F of the Central Excise Act, 1944. In terms of Board's Instruction dated 28.10.2022, I find that the pre-deposit made vide DRC-03 was invalid payment. Though sufficient time was granted to the appellant to make the revised payment in terms of Circular No. 1070/3/2019-CX dated 24.06.2019, they have failed to furnish proof of revised payment of pre-deposit of 7.5% of the duty made. I, therefore, dismiss the appeal filed by the appellant for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944.

7. In view of the above, the appeal filed by the appellant is dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944.

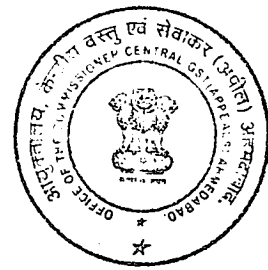
8. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।  
The appeal filed by the appellant stands disposed of in above terms.

  
24 March, 2023  
(Akhilesh Kumar)  
Commissioner (Appeals)

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

Date : 24.03.2023



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Appellant

The Assistant Commissioner,  
CGST& Central Excise, Division-IV,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST& Central Excise, Division IV, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file

