

P3



सत्यमेव जयते

आयुक्त का कार्यालय), अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065 टेलीफैक्स : 079 -26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)32/EA-2/North/Appeals/2018-19 / 11314 to 11319

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-07-2019-20

दिनांक Date : 20/06/2019 जारी करने की तारीख Date of Issue _____

03/07/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Sachin Gusia, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. Div-VII/GST-Refund/96/final/Monarch/2018 दिनांक: 27/06/2018 issued by Assistant, Div-VII, Central GST, Ahmedabad-North

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

Monarch Dyestuff Industries & Exports Ltd.
Ahmedabad

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 issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 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।

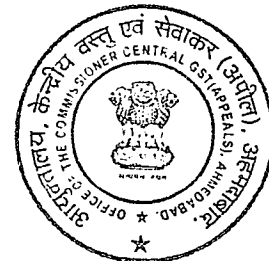
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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



... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

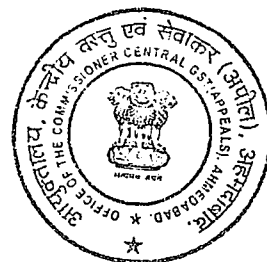
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-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 ओ-20, न्यू मैनटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 not withstanding 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 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.

- (6) 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 इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

6(I) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017 Goods and Services Tax(Compensation to states) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

The below mentioned departmental appeal have been filed by Assistant Commissioner, Division VII, CGST & Central Excise, Ahmedabad North Commissionerate, [for short -'adjudicating authority'] under Section 107 of the Central Goods and Services Tax Act, 2017, the details of which are as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD-06	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]
1	M/s. Monarch Dyestuff Industries & Exports Ltd. (GSTN NO. 24AABCM8936F1ZG)	RFD-06 F.No. Div-VII/GST-Refund/96 /final/Monarch/2018 dated 27.06.2018 [for short -'impugned order']	45/2018-19 dtd 31.12.2018

2. Briefly, the facts of the case are that the respondent filed manually refund claim amounting to Rs. 705480/- (IGST Rs. 0/-, CGST Rs. 352740/- & SGST Rs. 352740/-), vide Circular No. 17/17/2017-GST dated 15-11-2017, of ITC on Export of Goods & Services without payment of Integrated Tax for the months of November-2017 in terms of Section 54 of the Central Goods and Services Tax Act, 2017. The adjudicating authority vide his impugned order, mentioned in the table *supra*, sanctioned the refund claim.

3. On the refund claims being sent for post audit, it was observed by the Deputy Commissioner(Audit), Audit Cell vide letter F.No. VI/1(b)-48/Post-Audit/Div.VIII/2017-18 dated 26.12.2018 that the value of export as per GST invoice declared by the respondent is Rs. 93,07,283/- which differed from its corresponding value of export as per shipping bills i.e. FOB value of Rs. 91,09,818/-. Thus the lower of the above value should be taken for refund computation as per Para 9.1 of Circular No. 37/11/2018-GST dated 15.03.2018. As such, the Adjudicating Authority has erred by sanctioning the excess refund amount of Rs. 7484/- for CGST and Rs. 7484/- for SGST. Further, The Commissioner, CGST & C.EX., Ahmedabad North Commissionerate vide his aforementioned Review Orders, authorized the Assistant Commissioner, Div-VII, CGST & C.EX., Ahmedabad North to file the aforementioned appeal raising the following grounds:

- that the value of export as per GST invoice declared by the respondent is Rs. 93,07,283/- which differed from its corresponding value of export as per shipping bills i.e. FOB value of Rs. 91,09,818/-. Thus the lower of the above value should be taken for refund computation as per Para 9.1 of Circular No. 37/11/2018-GST dated 15.03.2018.;
- that the adjudicating authority has erred by sanctioning the excess refund amount of Rs. 7484/- for CGST and Rs. 7484/- for SGST which is required to be recovered alongwith interest.



4. Personal hearing in the matter was held on 20.05.2019. Shri Chhatrasinh K. Dodiya, Chief Accountant, Authorized Representative of the appellant, appeared on behalf of the party and did not submit any oral/written submission.

5. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra*. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIOs, are erroneous or otherwise.

6. The matter deals with refund of ITC on Export of Goods & Services without payment of Integrated Tax, and therefore before moving forward, let me first reproduce the relevant rules which enables a person to seek refund of tax in such a situation, viz.

RULE 89. Application for refund of tax, interest, penalty, fees or any other amount. —

[(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely :-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- [(E) "Adjusted Total Turnover" means the sum total of the value of



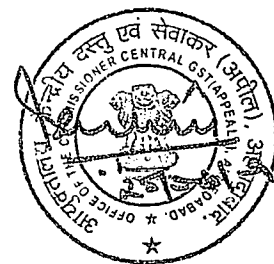
- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -
- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.]
- (F) "Relevant period" means the period for which the claim has been filed.

Para 9 of Circular No. 37/11/2018-GST dated 15.03.2018:

9. Discrepancy between values of GST invoice and shipping bill/bill of export
 It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under Section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund.

7. I have carefully gone through the facts of the case on records, grounds of the Appeal. The primary ground raised by the department is that the value of export as per GST invoice declared by the respondent is differed from its corresponding value of export as per shipping bills i.e. FOB value. I find that that the respondent has not filed any oral/written submission. It is very crystal clear from the Para 9.1 of Circular No. 37/11/2018-GST dated 15.03.2018 that during the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund. Thus, I find that the ground raised in the departmental appeal, that the adjudicating authority has erred by sanctioning the excess refund amount of Rs. 14968/-, is tenable.

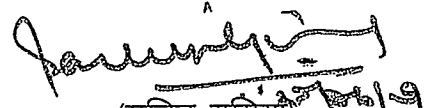


8. In view of the foregoing, I find that there is merit in the departmental appeal and therefore, I set aside the impugned OIOs to the extent they have erroneously sanctioned the refund amounting to Rs. 7484/- for CGST and Rs. 7484/- for SGST.

9. The departmental appeal is allowed and the impugned order is set aside to the extent it has erroneously sanctioned the excess refund as mentioned in above para. The prayer of the department for recover the amount erroneously refunded in excess to the respondent, with interest is also allowed.

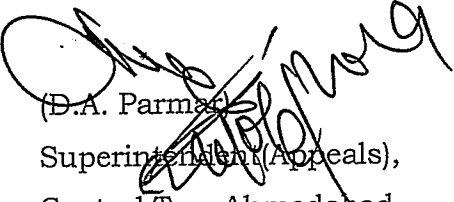
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the department-appellant stands disposed of in above terms.


(सचिन गुर्सीया)
संयुक्त आयुक्त (अपील्स)

Date : 29.06.2019

Attested


(D.A. Parmar)
Superintendent (Appeals),
Central Tax, Ahmedabad



By RPAD.

To,
M/s. Monarch Dyestuff Industries & Exports Ltd.,
24AABCM8936F1ZG(GSTIN),
301, Shagun Complex, 3rd Floor,
Nr. ST Xaviers Ladies Hostel, Swastik Society,
Navrangpura, Ahmedabad-380009

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- VII, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.



