
 सत्यमेव जयते	<b>::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद शुल्क::</b>		
	<b>O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,</b> 7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, पोलिटेक्निक के पास, आम्बवाडी, अहमदाबाद : 380015		

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)110,111,112&113 /Ahd-II/Appeals-II/ 2015-16 / 1565 to 1571

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP—104 to 107-16-17**

दिनांक (Date): **29.03.2017**, जारी करने की तारीख (Date of issue): 10/04/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No. **39/ADC/2015/DSN** Dated: **01/05/2016**

issued by: Additional Commissioner Central Excise (Div-I), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s NSP Pumps Pvt. Ltd.**

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

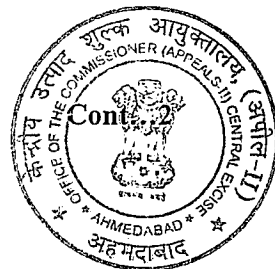
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में 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

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

*As. fil*



- (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 :-

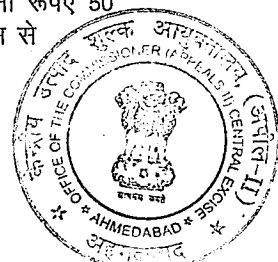
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) 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.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 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 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 'बंभित 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. 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 subject appeal are filed by 1. M/s. NSP Pumps Pvt. Ltd., Plot No.250, Phase-I, GIDC, Near Devi Masala, Naroda, Ahmedabad 2. Mehul K. Patel 3. Shri Gopaldas of Gopalsons, Sirsa, and 4. Shri Vaibhav k. Patel, of M/s. NSP Sales and Services vadodara. (Hereinafter Referred To As 'The Appellants') Against the Order in Original No.39/ADC/2015/DSN (hereinafter referred to as 'the impugned order') passed by the ADDL..Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant no.1 is engaged in the manufacture of P.D. Pump, Electrical Motor falling under Chapter heading 84 & 85 to the Central Excise Tariff Act, 1985.

2. Brief facts of the case is that the appellant no.1 was indulge in the evasion by way of clearing excisable goods, without Excise Invoices, without payment of Excise duty and without accounted for in their registers. Finished goods were cleared to M/s. Gopal Sons, Sirsa and M/s. NSP Sales & Service, Vadodara etc. clearance was found written on the "Kachha Chitthi" without payment of duty. They had not informed the department about the replacement of fully finished goods as well as goods returned as rejected for replacement. No documentary evidence filed that the duty had been paid on the goods. Buyers have confirmed the receipt of finish goods without Invoice & without payment of duty. Excise duty involved Rs.628793/- to be recovered with interest and penalty. Show cause Notices issued to all the appellants. Decided vide above OIO and confirmed with penalties.

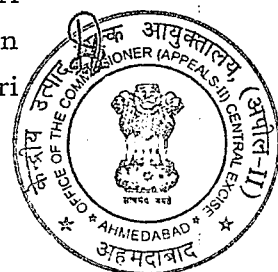
3. Being aggrieved with the impugned order, all the appellants preferred this appeals on the following main grounds ;

Removal of goods without payment of duty under Kachha chits were nothing but duty paid goods returned back after repairs under replacement scheme and no fresh goods were removed without payment of Central Excise duty.

The statement of Shri Mehul Patel, authorized signatory has specifically stated that we have not cleared fresh finished goods without payment of central excise duty. that the goods cleared by us under the replacement scheme were not FRESH ONE finished goods but it was a finished duty paid goods returned after repairs. During the search no excess or shortage of finished goods/inputs were found.

That when any transaction is settled by JV entry, there being narration of the transaction. However, before arriving at the conclusion the narration has not been taken into consideration.

That the ratio of the decision in the case of Nova Petrochemicals of Hon'ble CESTAT is irrelevant with the present issue is not correct. The statement of Shri Mehul Patel, and Gopaldas of Gopalsons, Sirsa are contrary to the evidence on record. Hence the reliability of these statements is not justified. Shri Vaibhav Patel, authorized signatory of M/s. NSP Sales and Services, vadodara



has not accepted that they have purchased fresh finished goods from them. In the impugned 010 personal penalty Rs.10000/- has been imposed on Shri Vaibhav Kantilal Patel, they have not purchased fresh finished goods from us but got the goods repaired. personal penalty imposed on Shri Vaibhav Patel is against the principle of natural justice .

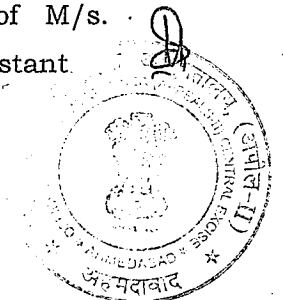
Personal penalty of Rs.25,000/- and Rs.10,000- have been imposed on Shri Mehulbhai Kantibhai Patel, our employee and Shri Gopaldas of Gopalsons respectively that the statements of both witnesses are contrary to the facts on record. Penalty imposed on them is unwarranted. The citation relied upon by them 1. M/s.Hindustan Machines reported at 2013(294)ELT.43(Tri.Del.) 2.M/s.visvas traders p. ltd. reported at 2012(278)ELT.362(Tri.ahmd.)3.M/s.jyoti wire ind.. ltd. reported at 2014(300)ELT.477(Tri.Mum.)4. M/s.bhandary met. Corpn.. ltd. reported at 2014(310)ELT.599(Tri.Mum.)

4. Personal hearing was accorded on 05-1-17 and on 28-2-17. Shri N.R. Parmar autho. Repr. Attended personal hearing on behalf of all the appellants. He reiterated the submissions made in their GOA. I have carefully gone through the subject show cause notice, documents available on record. Written Submissions made in their appeal as well as submissions made during Personal Hearing.

5. I find that, the appellants have said that the goods were finished but nowhere it is mentioned that the goods in question was fully finished FRESH goods. In this regard, I find that they had never informed the department about the receipt of the rejected goods received for replacement. They have not received any document along with the said rejected goods from their buyers, therefore; they had failed to establish receipts of rejected goods and also failed to correlate the same with the initial clearances of duty paid goods. They had suppressed the material facts regarding manufacture and clearance of fully finished excisable goods under "Kachha Chits" to their buyers as replacement quantity. They had not paid Central Excise duty on the said goods. I find that, that proper account of fresh and repaired quantity of finished goods has not been maintained which indicates the malafide intention of the appellant to evade payment of Excise duty.

6. I rely upon the decision of Hon'ble Tribunal Delhi in case of Bharat HeavyElectricals Ltd. Vs Collector Of C. Ex., Indore - [1999 (112) E.L.T. 246 (Tribunal)]. The said decision is upheld by the Hon'ble Apex Court in the said case of Bharat Heavy Electrical Ltd. Versus Commissioner Of Cus. & C. Ex., Indore - 2003 (154) E.L.T. 10 (S.C.). Therefore, the case laws cited by the appellants are not applicable in this case.

7. I further find that the statements of the authorized signatory of the appellant & authorized persons of the buyers have not been retracted at any point of time. Further, I find that M/s. NSP Pumps has not paid Excise duty by reasons of suppression of facts and contravention of provisions of CEA, 1944 with intent to evade payment of duty. Therefore, penalty imposed is legal. I rely on the case of M/s. Dharmendra Textile Mills Ltd. [2008 (231) E.L.T. 3 (S.C.)] and in the case of M/s. Rajasthan Spinning & Weaving Mills Ltd. [2009 (238) E.L.T. 3 (S.C.)]. In the instant



case, the appellant has cling to clandestine operations to conceal the production and removed the goods without accounting for in their records, without documents and deliberately to evade excise duty. Thus, rendered them liable for penalty. Therefore, penalty imposed is legal.

8. I find that Shri Mehul K. Patel, Authorized Signatory of the appellant was concerned in the transporting, removing, depositing, keeping, selling or purchasing etc., the excisable goods which they knew or had reasons to believe that the same were liable for confiscation under the said Act or the rules framed there under. These acts on the part of him have rendered himself liable for personal penalty. Therefore, penalty imposed is legal.

9. I find that the buyer Shri Gopaldas, Proprietor of M/s. Gopalsons, Sirsa, Haryana, who had purchased the excisable goods without Excise Invoices and paid the sales proceeds in cash. He stated that they had received the fully manufactured excisable goods without accompanying Excise invoices from the appellant. That the amounts towards purchase of such goods had been paid by them to the appellant. Therefore, it is evident that Shri Gopaldas, was responsible for helping and abetting the appellant to clear the excisable goods on without payment of Excise duty. With the involvement of him, the appellant has evaded Excise duty and clandestinely cleared the said goods. Therefore; penalty imposed upon Shri Gopaldas is legal.

10. I find that the buyer Shri Vaibhav Kantibhai Patel, Authorized Signatory of M/s. NSP Sales & Service, Vadodara, has stated that they had received the fully manufactured excisable goods without accompanying Excise invoices from M/s. NSP Pumps Pvt. Ltd.; that the said amount towards such purchase was paid in cash to the appellant. Therefore, Shri Vaibhav Kantibhai Patel, was responsible for helping and abetting Mthe appellant to illicitly remove the goods. with the involvement of Shri Vaibhav Kantibhai Patel, the appellant has evaded Excise duty by way of suppression of production of the excisable goods and clandestinely cleared the said goods with malafide intention Therefore, Shri Vaibhav Kantibhai Patel is also liable for penalty. Therefore, penalty imposed is legal.

11. In view of the foregoing discussion and findings, I uphold the impugned order, and disallow all the appeals filed by above named appellants.

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

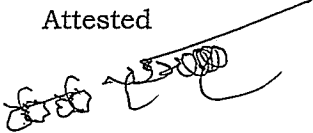
12. The appeals filed by the appellants stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar )  
Superintendent (Appeals-II)  
Central Excise, Ahmedabad.



By Regd. Post Ad.

- 1.M/s. NSP Pumps Pvt. Ltd.,  
Plot No.250, Phase-I, GIDC,  
Near Devi Masala,  
Naroda, Ahmedabad.
2. Shri Mehul K. Patel  
M/s. NSP Pumps Pvt. Ltd.,  
Plot No.250, Phase-I, GIDC,  
Near Devi Masala,  
Naroda, Ahmedabad.
3. Shri Gopaldas of Gopalsons,  
House no. 201.aggarsen colony,  
Sirsa, Haryana
4. Shri Vaibhav K. Patel [ M/S.NSP Sales And Services]  
13,14 Maruti Shoping Centre,  
Opp. Divy Bhasker Press,  
Vadodara.

Copy to :

- 1.The Chief Commissioner, Central Excise, Ahmedabad.
- 2.The Commissioner, Central Excise, Ahmedabad-II.
- 3.The Asstt. Commissioner, Central Excise, Div-I, Ahmedabad-II
- 4.The Asstt.Commissioner (Systems), Central Excise, Ahmedabad-II.
- 5.Guard file.
- 6.PA file.

