
 सत्यमेव जयते	<b>आयुक्त (अपील-II) का कार्यालय, केंद्रीय उत्पाद शुल्क</b> <b>शुल्क:</b> <b>O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE</b> 7 <sup>th</sup> मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7 <sup>th</sup> Floor, Central Excise Building, पोलिटेकनिक के पास, Near Polytechnic, आम्बवाडी, अहमदाबाद-380015- Ambavadi, Ahmedabad-380015	

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(85)100/Ahd-II/Appeals-II/ 2015-16

V2(85)39,70&79/Ahd-II/Appeals-II/ 2016-17

11560 to 1564

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-111 to 114-16-17

दिनांक (Date): 30.03.2017, 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-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी

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

Arising out of Order-In-Original No. As per OIO's

issued by: Assistant/Deputy Commissioner Central Excise (Div-IV), Ahmedabad-II

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

**M/s Sahaj Solar Private 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 धारा अतंत 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।

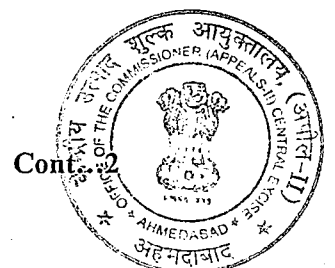
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(□) 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।

G. file



- (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 हास्पिटल 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 वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक है 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 वहां 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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।

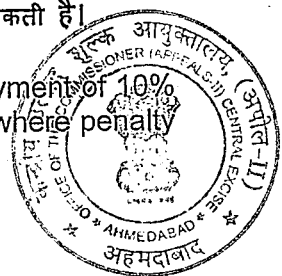
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 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 subject appeals are filed by M/s. Sahaj Solar Pvt. Ltd., Survey No. 421, Chacharwadi, Moraiya, Dist-Ahmedabad (Hereinafter referred to as 'The Appellant') Against OIONo.[1].18/refund/201516,[2]MP/32/1617/refund,[3]Bond/Arv/Conc.Rate/Sahaj/13/2015-16, and [4] 54/refund/2016 (hereinafter referred to as 'the impugned orders') passed by the Assistant Commissioner, Central Excise, Div-IV, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Non-renewable energy device under Chapter 85 of the Central Excise Tariff Act 1985. [Hereinafter referred as CETA-1985].

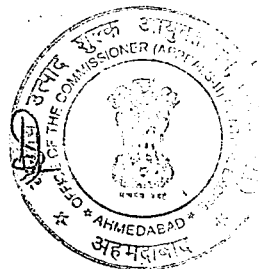
2. Brief facts of the case are that the appellant has filed refund claims i.e. for Rs.304704/-, Rs.6,54,587/- and Rs. 22449/- under the grounds that, Sr. No. 332 of Notification No. 12/2012-CE dated 17.03.2012 grants exemption for manufacture of Non-conventional energy devices or systems specified in List 8' falling in any chapter of CETA, 1985. Said Notification also grants exemption from Excise duty on raw materials, if used in the manufacture of Solar Photovoltaic Modules and Panel for Water Pumping and other applications and Sr. No. 238B of said Notification states that parts used in manufacture of solar water system is exempted. They are supplying goods, to M/s.Gujarat Urja Vikas Nigam Ltd. and purchased Solar Mounting Structure from M/s. Vishal Engineers and Galvanisers Pvt.Ltd on payment of duty, to manufacture solar water pumping system, which are exempted as per Sr. 238B of said Notification. On scrutiny, it was found that Parts for use in the manufacture of solar water heater and system are exempted from central excise duty subject to the condition No. 2 laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed. The appellant has not followed the provisions and procedures as specified in *said Rules, 2001*. Also Said refund claims are hit by the provisions of unjust enrichment. Therefore, show Cause Notices/letter were issued, and vide impugned orders refund claims rejected.

3. Being aggrieved by the impugned orders the appellant filed the present appeals on the following main grounds;

in terms of Sr.No. 332A of Notification No.12/2012-CE dated 17.3.2012, "parts consumed within the factory of production for the manufacture of goods specified in List 8 provide the procedure of Central Excise (Removal of goods at concessional rate of duty) Rules, 2001 is followed.

They relied upon decisions of various Courts/Appellate authorities; 1. CCE Vs Neoli Sugar Factory (1993) 65 ELT. 145 (SC) 2. CCE Vs. Himalayan Milk Products (2000) AIR SCW 4155/ 122 ELT 327(SC) 3. Hindustan Aluminium Corpn Ltd Vs. State of UP (1981) 48 STC 411 (SC) 4.. Hon'ble Supreme Court in Mangalore chemicals and fertilizers Ltd Vs. Dy.Commissioner -55 ELT 437 83 STC 234 .

On the issue of unjust enrichment, they submitted that the amount of refund is forming part of receivables under the head 'loans and advances' in the balance sheet. In this matter they relied on following decisions- 1.CC Vs. Maruti Udyog Ltd- 2003



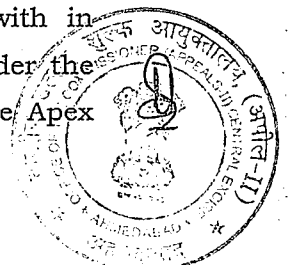
(155) ELT. 523 (CEGAT] 2.Hero Honda Motors Ltd - CC 2000 (126) ELT

4. Personal Hearing was held on 20 -12-16, Shri Rohan Thakker,CA appeared on behalf of the appellant. he reiterated GOA. I have gone through all records in the form of Show Cause Notice, the impugned orders and addl.written submissions. I have also perused various case laws cited by the appellants. The issue to be decided is admissibility of the refund claims filed by the appellants. I find that, the appellant is engaged in the manufacture of non-renewable energy devices such as solar photovoltaic module and panel falling under Chapter 85 of the first schedule to Central Excise Tariff Act,1985. Benefit of Notification No. 12/2012-CE dated 17.03.2012 is found to have been available to this product while clearing from the factory, subject to the conditions prescribed therein. The appellant have purchased solar pumps, pipes, cables, solar module mounting structure from M/s. Vishal Engineers and Galvanizers Pvt.Limited on payment of duty which are utilized in manufacturing of solar water pumping system of the appellant but as per said Notification, parts used in manufacture of solar water system is exempted from duty and the duty involved in the parts purchased are the ground for the refund claims filed by the appellants.

5. I find that, the present refund claims raised on the basis of the exemption from duty provided vide entry No. 238B of Notification No. 12/2012 CE, as contended by the appellant, the question arise whether the appellant is eligible to get benefit of this exemption for their products. I find that, as per Sr. no 238B of said Notification Parts for use in the manufacture of solar water heater and system are exempted from central excise duty subject to the condition No. 2 ;*where such use in elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed.* However, appellant is not the manufacturer of items covered under sr. no. 238B which covers parts for use in the manufacture of solar water heater and system.

6. I find that, for availing the exemption specified conditions must be satisfied. In the present case, the goods manufactured and cleared from the factory of M/s. Vishal Engineers and Galvanizers Pvt.Ltd,the supplier manufacturer, were not used in their factory but were claimed to have been used in the factory of the appellant. I find that, instead of following these provisions and procedures specified in said Rules 2001, the appellant opted to procure the duty paid inputs, said to be the parts of solar water pumping system, from the supplier manufacturer and then filed refund claims.

7. I find that, the appellant has failed to procure the goods at nil rate from the concerned supplier manufacturer. the appellant should have fulfilled the mandatory conditions prescribed in the notification that procedures of said Rules, 2001, which is a condition for getting the benefit of Notification No. 12/2012-CE. If the condition specified in a notification is not fulfilled, benefit of said notification is not available to the goods cleared. Thus, the duty sought to be refunded by the appellant is paid with in accordance with the provisions of Central Excise Act/Rules and not come under the Section 11B of the Central Excise Act, 1944. I rely upon the judgments of the Apex



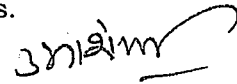
Court in following cases. 1. CCE, Jaipur V. J.K. Synthetics (2000 120) ELT 54 (SC) 2. CCE, New Delhi V. Hari Chand Shri Gopal (2010 260) ELT. (SC)

8. I find that the refund claim is hit by the principles of unjust enrichment as the amount of duty involved in the inputs/parts which is sought as refund consist a part of the cost/price of the finished goods of the appellant supplied to their customer. If the amount of duty is refunded to them, the appellant will be in a position to get unjust enrichment as they might have passed on the duty burcēn to their customers. The appellant remained silent on the point as to whether the incidence of duty amount sought to be refunded by them is passed on to their customers or otherwise. I find that the doctrine of unjust enrichment is applicable in this case.

9. In view of the foregoing discussion and findings, I uphold the impugned Orders and disallow all the appeals filed by the appellants.

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

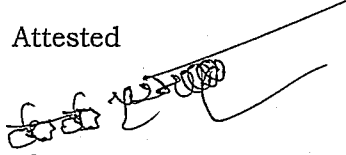
10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K. Parmar]

Superintendent (Appeals-II)  
Central Excise, Ahmedabad.

By Regd. Post AD.

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Chacharwadi, Moraiya,  
Dist- Ahmedabad.

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Dy. Commissioner, Central Excise, Div-IV, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. P.A. file.
6. Guard file.

