



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्कः:

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटैकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad-380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(32) 4/EA-2/Ahd-II/Appeals-II / 2016-17 / 29040294
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 083-16-17
दिनांक (Date): 13.02.2017, जारी करने की तारीख (Date of issue): 16/02/17
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. 2749/Refund/2010 Dated: 22/10/2010
issued by: Assistant Commissioner., Central Excise (Div-IV), Ahmedabad-II

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

M/s Rangdhara Polymers

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 ।

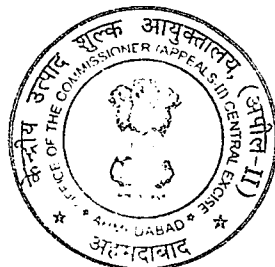
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं ।

C. file



Cont...2

- (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, अपीलों 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.

- (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 इ.ए-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 रूपे 5 लाख या उससे कम है वहां रूपे 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहां रूपे 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 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 '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 appeal is filed by the department (hereinafter referred to as 'the appellant') Under Section 35(2) Of Central Excise Act 1944, against OIO No. 2749/REFUND/2010, dated 22.10.2010 (hereinafter referred to as 'the impugned order') Passed by The Asstt. Commissioner, Central Excise, Division-IV, Ahmedabad-II, (hereinafter referred to as 'the adjudicating authority') in favour of M/s. Rangdhara Polymers, Block No.10-13-14, Ni.Sakar Healthcare Pvt. Ltd., Sarkhej-Bavla Highway, Changodar, Ahmedabad-382210 (Hereinafter referred as 'the respondent') the respondent is engaged in the manufacture of Colour concentrate plastic granules falling under Chapter 32 of the Central Excise Tariff Act 1985 [hereinafter referred as CETA-1985].

2. Briefly stated the fact of the case are, the respondent has filed a refund claim for Rs.4,88,732/- on 16.09.2010 for unutilized cenvat credit accumulated in respect of goods supplied to 100% EOU for the period from April-2008 to June-2008, in terms of Notification No.5/2006-CE(NT) dated 14-03-2006 issued under Rule 5 of the Cenvat Credit Rules 2004. under the provisions of Rule-5 of the Cenvat Credit Rules, 2004 read with Notification No.5/2006-CE (NT) dated 14.03.2006. The present appeal has been filed with respect to sanction of refund claim, on the grounds that the limitation under section 11B applies for refund filed under Rule 5 of Cenvat Credit Rules, 2004.

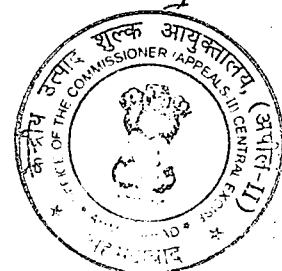
3. The Respondent has placed reliance on the decisions of ;1. *mPORTAL INDIA WIRELESS SOLUTIONS P. LTD. VERSUS C.S.T., BANGALORE 2012 (27) S.T.R. 134 (Kan)*:-

It was held that, Cenvat credit - Refund of - Export of software, a non-taxable item - Service tax paid on input services, which remained unutilized - Exporter is entitled to refund of such unutilized credit on furnishing of particulars of tax paid by them - It cannot be denied on ground of limitation under Section 11B of Central Excise Act, 1944. [para 6]

2. *COMMISSIONER OF C. EX. & CUSTOMS, SURAT-I VERSUS SWAGAT SYNTHETICS [2008 (232) E.L.T. 413 (Guj.)]* 3. *STI INDIA LTD. VERSUS COMMISSIONER OF CUS. & C. EX., INDORE [2009 (236) E.L.T. 248 (M.P.)]* 4. *M/s QUALITY BPO SERVICE PVT LTD Vs COMMISSIONER OF SERVICE TAX AHMEDABAD [2014-TIOL-367-CESTAT-AHM]*:- 5. *M/s DEEPAK SPINNERS LTD Vs COMMISSIONER OF CENTRAL EXCISE, INDORE [2014-TIOL-63-CESTAT-DEL]*

6. *ELCOMPONICS SALES PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, NOIDA [2012 (279) E.L.T. 280 (Tn. - Del.)]*

Refund dais() - Limitation - Time limit stipulated under Section 11B of Central Excise Act, 1944 is not applicable in case of refund claim made under Rule 5 of Cenvat Credit Rules, 2004. [para 6]



In light of the above cited judicial pronouncements rendered by various Tribunals, it is clear that the time limit prescribed under section 11B is not applicable for refund claim of accumulated credit filed under Rule 5 of the Cenvat Credit Rules, 2004. As such, the appeal filed by revenue is devoid of merits and is liable to be rejected.

4. Personal hearing was held on 04.11.2016, which was attended by Shri Pradeep Jain, CA of the respondent party. He reiterated the grounds of appeal filed by them earlier. He made additional submission. I have gone through all records placed before me in the form of the impugned order and written submissions of department as well as submissions made during personal hearing by the respondent. I find that the issue to be decided is the refund sanctioned to the respondent vide said order passed by the adjudicating authority is correct or otherwise. I have carefully gone through the facts of the case. In the subject refund application dated 16.09.2010, it was submitted by the claimant that the CESTAT Ahmedabad vide Order No. A196-97/VVZB/AND/2010 dated 25.01.2010 has allowed their appeal and rejected the appeal of the department on the similar issue of the claimant itself. The claimant had earlier filed a refund claim for Rs.4,17,531/- for the period from April-2007 to September-2007 on 03.07.2008. The claimant was issued show cause notice bearing F.No.V.39/18-07/R/I11/08 dated 17.09.2008 calling them upon as to why their refund claim should not be rejected on the ground that Central Excise law does not recognize 'deemed export' made to 100% EOUs. The said refund claim was rejected vide Order-in-Original No.1683/Refund/08 dated 08.12.2008, holding that Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.5/2006-CE does not provide provisions for granting refund in case of supplies made to EOU under deemed export. The claimant had filed an appeal before the Commissioner (Appeals-I), Ahmedabad against the aforesaid O10. The Appellate Commissioner vide Order-in-Appeal No. 225/2009 dated 31.07.09 [issued on 07.08.2009] decided the issue of deemed export in favour of the claimant and allowed the refund claim for the period July-2007 to September-2007 and rejected the refund for the period April-2007 to June-2007, in terms of conditions of Notification No.5/2006-CE [NT] that the provisions of Section 11B of the Central Excise Act, 1944, are applicable to such refund claims and the date of export i.e. the date on which the final products were cleared from the factory to 100% EOU would be relevant date. On being aggrieved, the claimant filed an appeal before the CESTAT for rejection of claim for the period April to June-2007 in the above mentioned OIA. Simultaneously, Department also filed an appeal before the CESTAT against the same O1A for the refund of credit allowed partially for the period of July to September-2007. The CESTAT, vide Order No. A/96-97/VVZB/AHD/2010 dated 25.01.2010, after placing reliance on the decisions of the Tribunal in the cases of Sanghi Textiles [2006 (206) ELT 854 (Tri.Bang)] and Anjani Synthetics [2001 (132) ELT 688 (Tri.Mum)], rejected the appeal filed by the Revenue and allowed the appeal filed by the claimant. In view of the above CESTAT Order, the claimant has now filed the refund claim of the cenvat credit accumulated for the period from April-2008 to June-2008 for Rs.4,88,732/-



5. I Find that, Rule 5 of the Cenvat Credit Rules, 2004, provides for utilization of Cenvat Credit in respect of input or input service by the manufacturer used in the manufacture of final products cleared for export under bond or letter of undertaking towards payment of duty of excise on any final product cleared for home consumption or for export on payment of duty; or service tax on output service. The Rule further provides that where such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund subject to the safeguards, conditions and limitations specified.

Notification No.5/2006-CE [NT] dated 14.03.2006, as amended, specifically provides that;

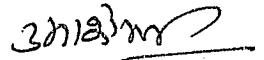
The application in Form A, alongwith the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, Cenvat Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in Section 118 of the Central Excise Act, 1944.

6. I find that, the provisions of Section 11B have been specifically made applicable to the refund claims of unutilized Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. In this case, I find that time limit factor is applicable in case of refund claim for accumulated credit under Rule-5 of Cenvat Credit Rules, 2004 and the claim is liable to be rejected. I rely on the decisions of 1.Spectrumix Plastics V. Commissioner of C. Ex.& St, Vapi [2014 (307) E.L.T. 353 (tri. Ahmd.) 2.GTN Engineering]I] Ltd. V. Commissioner of CE, Coimbatore, [2012 (281) E.L.T. 185 (mad)].

7. In view of the above discussions, I hold that the respondent is not entitled for the said refund. Therefore, I allow the appeal filed by the department.

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

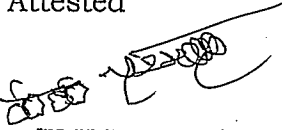
The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar)

Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post A. D

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Copy to :

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



