



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

शुल्कः:

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,  
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटैकनिक के पास,  
आम्बवाडी, अहमदाबाद : 380015



7<sup>th</sup> Floor, Central Excise  
Building,  
Near Polytechnic,  
Ambavadi,  
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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(24)59&119/Ahd-II/Appeals-II/ 2015-16 / 344 to 348  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 091-092-16-17  
दिनांक (Date): 20.02.2017, जारी करने की तारीख (Date of issue): 23/02/17

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 **As per OIO's**  
issued by: Deputy Commissioner Central Excise (Div-IV), Ahmedabad-II

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

**M/s Urmin Products P. 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

(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 है।

G. 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 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 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 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 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 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 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।

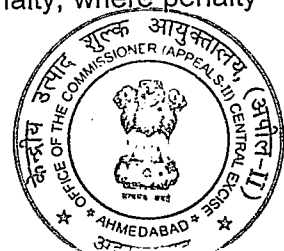
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 appeals are filed by M/s. Urmin Products Pvt. Limited, 48, Changodar Industrial Estate, Bavla Road, tal- Sanand, Dist-Ahmedabad (Hereinafter Referred To As 'The Appellant') Against the OIO No.2479/Rebate/2015 and OIO no.01to4/Rebate/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 goods falling under Tariff Heading No.24 of the Central Excise Tariff Act 1985. They are Also availing CENVAT credit under CENVAT Credit Rules, 2004.

2. Brief facts of the case is that the appellant has filed various rebate claims amounting to Rs. 1,54,129/- and Rs. 553771/- for duty paid on goods cleared under DRAWBACK scheme. The appellant has submitted documents along with the rebate claim. During the scrutiny, a query memo raised, and also SCN issued. Same were decided vide above OIO's and claim of only Rs.53148/- was sanctioned and rest of the claims were rejected.

3. Being aggrieved with the impugned orders the appellant preferred this appeal on the following main grounds.

a. It has been recorded that the appellant had not submitted any written reply, when the facts revealed that the written submissions were filed by them on 09.06.2015 itself.

b. The adjudicating authority has recorded that the rebate claim was filed with the office of improper authority. In the present case, the appellant being the manufacturer of the export goods and the adjudicating authority having jurisdiction over the factory of the appellant, the claim was filed with the proper authority.

c. it is submitted that filing of rebate claim is procedural. Even if the adjudicating authority was not the proper authority, it is incumbent on his part to have either forwarded the said claim to the proper authority, or should have returned the claim to the appellant.

d. The adjudicating authority in para 8.1 of his findings has referred that the during the scrutiny , it was noticed that the export was made under drawback scheme under "A" category i.e. not availing Cenvat credit and therefore the said rebate claim do not have merits to be sanctioned by his office. The appellant at this stage refers to the provisions of Rule 18 of the said Rules, which stipulates that where the goods are exported and its duty paid character is not in dispute, the rebate is required to be given to the exporter.

e. They relied on the case laws 1.GOI in the case of Jubilant Organosys Ltd. reported at 2012 (286) E.L.T. 455 (GOI). 2.GOI -Shreyas Packaging reported at 2013 (297) E.L.T. 476 (G.O.I), 3. The Hon'ble High court of Madras in the case of Shashun Pharmaceuticals Ltd. reported at 2013 (291) E.L.T. 189 (Mad.)



4. Personal hearing was held on 20-12-16. Shri N.K.Tiwari & V.Shah C.A. attended Personal hearing on behalf of the appellant. He reiterated written submissions and also submitted citations. I have gone through all records placed before me in the form of SCN's, the impugned orders and submissions made by the appellant. I proceed to decide the matter regarding the admissibility of rebate under the provisions of the law.

5. I find that, the Cenvat Credit of raw materials have been availed by the Manufacturer Exporter and not by the Merchant Exporter. Exporter As well as appellant has declared the same vide Sr. No. 3 of the ARE-I involved. As per copies of shipping bills filed by the appellant, it is clear that the Merchant Exporter, has availed drawback under DBK schedule A i.e. drawback rate when Cenvat facility is not availed". Rate of category A drawback is on higher side in comparison to B category, it includes the Excise portion. Also The merchant exporter is availing drawback of excise portion.

6. I find that, The provisions of Notification No 92/2012-Customs-(NT) dated: at Para 6 it is provided that :-

*The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component The difference between the two columns refers to the central excise and service tax component of drawback If the rate indicated is the same in both the column, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not.*

6. I find that, In the instant case the rate of drawback in category A and B for chapter Column 'A': Drawback when Cenvat facility has not been availed, Column 'B': Drawback when Cenvat facility has been availed, The Merchant Exporters has claimed the Draw back at the rate prescribed in column 'A' i.e. Drawback when Cenvat facility has not been availed. the appellant has misstated the facts during submission of rebate claims, Looking into the copies of ARE-1 and shipping bills and relevant provisions of law, I find that the appellant claimed the drawback in category A which pertains to "Drawback when Cenvat facility has not been availed, In this case the manufacturer is availing Cenvat Credit hence it is found irregular.

7. On the basis of foregoing discussion, I find that the case laws mentioned by the appellant are not applicable in this case. Hence, the manufacturer has availed Cenvat Credit of raw materials as declared by them at Sr. No 3 of the declaration in ARE-1s and made the payment at the time of clearances of final products for export. On the other hand appellant again taken back these input credit by way of drawback. A situation has arisen where the manufacturer is availing Cenvat of inputs, the merchant exporter is claiming drawback of excise portion also and fraudulently declaring 'A' in the shipping bill (when Cenvat credit is not availed) .Further, I find that, Declaration is filed to the effect that no separate claim for duty under Rule 18 of Central Excise Rule, 2002, has been or



will be made, as well as, no claim for refund / rebate of duty has been or will be made under the Customs & Central Excise duty 'drawback Rules, 1995 by the appellant. Therefore, when the merchant exporter is availing drawback of excise portion, the appellant is not eligible for rebate of duty as per provision of Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004CE-NT dated 06.09.2004 .

8. In view of the foregoing discussion and findings, I uphold the impugned Orders and disallow both the appeals filed by the appellant.

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

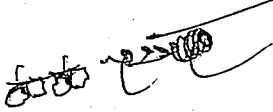
9. The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar )

Superintendent (Appeals-II)  
Central excise, Ahmedabad.

By Regd. Post AD.

M/s. Urmin Products Pvt. Limited,  
48, Changodar Industrial Estate,  
Nr, *Besan* Factory,  
Bavla Rood, Changodar,  
Tal- Sanand,  
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.

