



सत्यमेव जयते

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

शुल्क::

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(72)69/Ahd-II/Appeals-II/ 2015-16 / 522 to 522
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 095-16-17

दिनांक (Date): 27.02.2017 जारी करने की तारीख (Date of issue): 03/03/17

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

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. 01/Demand/2015-16 Dated: 31/08/2015

issued by: Deputy Commissioner Central Excise (Div-V), Ahmedabad-II

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

M/s India Electricals & Engineering Company

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 अंतत 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।

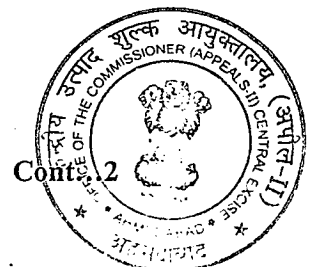
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

1 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 :-

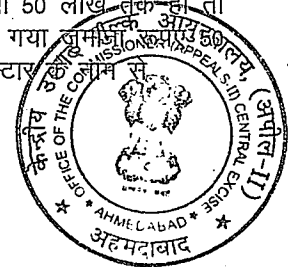
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 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



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।

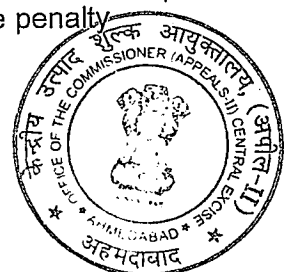
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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."



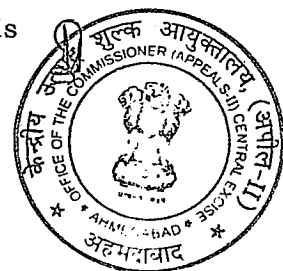
Order in Appeal

The subject appeal is filed by M/s. India Electricals & Engineering Company, 10, Kothari Estate, Dudheswar Road, Ahmedabad (hereinafter referred to as 'the appellant') against the Order in Original No.01/Demand/2015-16 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Division-I, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Submersible Pump falling under chapter 84 of the Central Excise Tariff Act, 1985 [hereinafter referred to as CETA-1985]. They are availing facility of Cenvat Credit under the Cenvat Credit Rules 2004.

2. The facts in brief of the case is, during the course of audit, it was observed that the appellant was availing full duty exemption on waste and scrap generated during the manufacture of final products, as provided under Notification no.10/2006-CE dated 01.03.2006. It appeared that appellant did not maintain separate accounts for receipt, consumption and inventory of inputs or input service used in the manufacture of dutiable and exempted goods as per Rule 6(2) of the Cenvat Credit Rules, 2004. Appellant has manufactured and cleared waste and scrap from 2008-09 to 2011-12 valued at Rs.128,66,634/- without payment of duty Rs.2,42,795/- as per Rule 6(3) (i) of CCR 2004 and interest thereon. The appellant has debited the said amount Under Protest. The appellant did not disclose this fact that they have not paid the amount payable on the clearances of exempted goods to the department. Said facts came to the knowledge of the department only during the course of Audit only. The appellant have resorted to suppression of facts with intent to evade the payment of Excise Duty. Therefore, Show Cause Notice was issued for recovery excise duty Rs.2,42,795/- invoking extended period of limitation, with Penalty under Rule 15(2) of the CCR 2004, also penalty to be imposed upon Shri Imran S. Mansuri, Managing Partner of said firm, under provisions of Rule 26(1) of CER, 2002. Same was decided vide above order and confirmed the demand with penalties..

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

The Appellant and Shri Imran S. Mansuri, Managing Partner. submitted that they have been procuring various inputs for using them in relation to manufacture of their final product, namely, Submersible Pumps; that since these goods are chargeable to excise duty and they are discharging liability of excise duty thereon and they avail the Cenvat credit facility on inputs and raw material; that in normal course of any manufacturing activity, waste and scrap is bound to be generated and such waste and scrap is generated in their case also; such waste and waste is exempt under Notification no. 10/2006 —CE and therefore they were removing such waste and scrap under this



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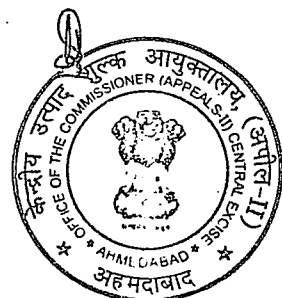
exemption.: that they were not aware that they were required to reverse or debit amount equal to the CENVAT credit on inputs involved in such waste and scrap and therefore they did not reverse the amount of CENVAT credit attributable to the inputs and raw materials contained in waste and scrap cleared under exemption; that since the quantity as well as value such waste and scrap is too low, it just escaped their attention and because of such bonafide error on their part the present issue has arisen; that the amount of Rs. 2,42,795/- that the audit officers insisted upon depositing is not in accordance with Rule 6(3) of the Cenvat Credit Rules, because this amount is calculated at the rate of 5% and 10% of the value of waste and scrap whereas the legal liability on them had been to reverse or pay back that Cenvat credit which was attributable to the inputs contained in such waste and scrap;

In support of their contention they have referred following case laws for consideration. 1. Fransco Italian Co. Pvt. Ltd. V/s Commissioner reported in 2000 (120) ELT 792 (Tribunal —LB) 2. Hellow Minerals Water (P) Ltd. V/s U01 reported in 2004 (174) ELT 422 (All) 3. Hi-Line Pens Pvt. V/s Commissioner reported in 2003 (158) ELT 168 (Tr-Del) 4. Tube Investment of India Ltd. Vs Commissioner reported in 2004 (177) ELT 880 (Tri-Chennai) .

That mere omission to give correct information was not suppression of facts unless it was deliberate and to stop payment of central excise duty; mere failure in giving correct information would not be a case where the revenue can invoke extended period of limitation. That since the demand itself is not justified; the question of paying the interest does not arise. That penalty should not be ordinarily imposed unless there is deliberate in defiance of law. held in the case of Hindustan Steel v/s State of Orissa 1978 ELT. 159 (Supreme Court)].

4. Personal hearing in the matter was fixed on 17-11-16, Shri Sudhansu, Advocate appeared and relied on their GOA submission. I have carefully gone through the Show Cause Notice, and submissions made by the appellants in their written GOA, as well as at the time of PH. The issue to decide is as to whether: 1. Recovery of excise duty for clearance of waste and scrap by invoking extended period of limitation along with interest and Penalty imposed on the assessee firm under rule 26 of Cenvat Credit Rules, 2004 is correct or not.

5. I find that, that the appellant had reversed the amount of Cenvat Credit which was attributable to the inputs. It further appeared that the appellant did not disclose the facts that they have not maintained separate records as provided under Rule 6(2) of the Cenvat Credit Rules 2004 for receipt consumption and inventory of inputs used in or in relation to the manufacture of exempted goods. They have also did not disclose the fact that they have not paid the amount payable as per Rule 6(3)(i) of the Cenvat Credit Rules, 2004 on the clearances of exempted goods at any point of time to the department and the said facts has come to the knowledge of the department only during the course of Audit. Rule 6 of the Central Excise Rules, 2002 casts the



obligation of proper assessment of duty on the assessee., the appellant is bound to properly assess their liability and discharge the same accordingly. The provisions of Rule 6(3) of Cenvat Credit Rules, 2004 are unambiguous and the appellant cannot claim to be ignorant about their obligation when they are manufacturing both, dutiable and exempted goods out of common inputs. They have failed to comply with the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 and the appellant had resorted to suppression of facts with an intent to evade the payment of proper Excise Duty. Therefore the extended period of limitation is correctly applicable in this case.

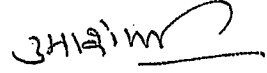
6. Further, as regards penalty on the appellant firm, I find that, the appellant has failed to act in a bonafide manner. I find that in the case of Goodyear India Ltd. Vs CCE, New Delhi 2002 (149) E.L.T. 618 (Tn.Del.), it was held that *penalty is impossible on assessee, having not acted in a bona fide manner*. This case law, is squarely applicable in the instant case, and hence penalty imposed is correct and legal. I also find that interest is leviable as per explanation II of rule 6 of CCR 2004.

7. Regarding, personal penalty on the partner shri Imran S. Mansuri, I agreed with the adjudicating authority, and find that penalty is not impossible on him.

8. In view of foregoing discussion and findings, I uphold the impugned order and disallow the appeal 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)

आयुक्त (अपील्स - II)

Attested


[K.K.Parmar]

Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post Ad.

1. M/s. India Electricals & Engineering Company,
10, Kothari Estate, Dudheshwar Road,
Ahmedabad - 380 004

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 Assistant Commissioner (System), Central Excise, Ahmedabad-II
5. Guard file
6. PA file.

