

## रजिस्टर डाक ए.डी.द्वारा

- क फाइल संख्या (File No.) : V2(38)88/Ahd-II/Appeals-II/ 2015-16 / 52 % 구o 53 오 स्थगन आवेदन संख्या(Stay App. No.):
- ख अपील आदेश संख्या (Order-In-Appeal No.): <u>AHM-EXCUS-002-APP- 097-16-17</u> दिनांक (Date): <u>23.02.2017</u> जारी करने की तारीख (Date of issue): <u>۲/۵3//</u> श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
  - Passed by Shri Uma Shanker, Commissioner (Appeals-II)

ग \_\_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- ॥, आयुक्तालय द्वारा जारी मूल आदेश सं \_\_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित Arising out of Order-In-Original No .<u>943/REB/2015-16</u> Dated: <u>19/11/2015</u> issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad-II

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

## M/s Meghmani Organics Ltd.

कोई व्यक्ति इस अपील आदेश से असतोष 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 |

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(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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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. ३. 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 <u>(सिस्टेट)</u> की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ—20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

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रेखाकित 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. Registar 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.

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भूगतान उपर्युक्त (3)ढंग से किया जाना चाहिएँ 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 हैं।

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 not withstanding 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.

न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या (4) मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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-l item of the court fee Act, 1975 as amended.

इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, (5) केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में (6) 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) -

- (Section) खंड 11D के तहत निर्धारित राशि; (i)
- (ii) लिया गलत सेनवैट क्रेडिट की राशि:
- सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि. (iii)

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:

- amount determined under Section 11 D; (i)
- amount of erroneous Cenvat Credit taken; (ii)
- amount payable under Rule 6 of the Cenvat Credit Rules. (iii)

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

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M/s Meghmani Organics Ltd, Block No 402-3-4,452-2-3-4, Post Chharodi, Taluka Sanand, Ahmedabad-382170 (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No 943/REB/15-16 dated 19.11.2015(hereinafter referred to as 'impugned orders') passed by the Assistant Commissioners of Central Excise, Division-III, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

The facts of the case, in brief, the appellant is register with the Central Excise 2. Department manufacturing the goods falling under chapter 38 of Central Excise Traiff Act, 1985. The appellant has exported the goods vide ARE-1 No 03.12.2013 and the said goods were board on vessel on 10.12.2013. There after they filed the rebate claim on 31.01.2014. The adjudicating authority issued the SCN to the appellant on the ground that they have filed the rebate claim on 10.07.2015 i.e after one year. Therefore SCN was issued as to why the rebate claim should not be rejected under the provision of Notification No 19/2004 CE(NT) dated 06.09.2004 and CBEC central Excise Manual of Supplementary Instruction 2005 read with Section 11 B of the Central Excise Act, 1944. The appellant vide their reply submitted that the said rebate claim was submitted in the division office on 31.01.2014. On 25.04.2014 a query memo was received which was complied on 02.05.2014. On 15.05.2014 again a letter was received from the division office stating that rebate claim is returned in pursuance of Para 2.4 of Chapter 9 of the CBEC Central Excise Manual. There after the appellant again re-submitted the rebate claim on 10.07.2015. The Adjudicating authority rejected the Rebate Claim for the reason cited above.

**3.** Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that order passed by the adjudicating authority is "Per-Se Arbitrary". The adjudicating authority has not consider the fact that initially the rebate claim was filed on 31.01.2014 and after solving various query it was resubmitted on 10.07.2015. The appellant further added that since the rebate claim was not sanctioned within three months of the submitted therefore they are entitle for the interest on the same. They have cited various judgments in their favour.

**4.** Personal hearing in the case was granted on 09.12.2016 however the appellant did not appear. Second personal hearing was granted on 05.01.2017 which was attended by the representative of the appellant.

**5.** I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

**6.** The appellant has filed the present appeal on the ground that the adjudicating authority rejected the rebate claim filed by the appellant on the ground



that they have filed the rebate claim on 10.07.2015 i.e after one year. The adjudicating authority was in a view that rebate claim was rejected under the provision of Notification No 19/2004 CE(NT) dated 06.09.2004 and CBEC central Excise Manual of Supplementary Instruction 2005 read with Section 11 B of the Central Excise Act, 1944.

7. I find that Appellant had filed a rebate claim on 31.01.2014. Further query raised by the department on 25.04.2014 was complied on 02.05.2014. However department on 15.05.2014 returned the rebate claim as un-auctioned in pursuance of Para 2.4 of Chapter 9 of the CBEC Central Excise Manual. There after the appellant submitted the rebate claim on 10.07.2015. Therefore the issue to be decided is-:

(1) What should be the relevant date and whether the rebate claim was filed within time limit?

To, decide the issue I hereby reproduce the relevant para of Section 11B Central Excise Act, 1944.

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

"(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Explanation. - For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India"

Therefore it is clear that one year will be counted from the day on which the goods are loaded in the ship. In the present case the export date is 10.12.2013 and the rebate claim was filed first on 31.01.2014. It is clear that the claim was filed within time limit. The claim was return for the want of documents. It is settle law that if the claim is filed and the same is returned. Then the relevant date will be counted on which they initially file the rebate claim. I therefore allow the appeal.

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हमदावा

V2 (38) 88/Ahd-II/Appeals-II/2015-16

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

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

3412 (उमा शंकर)

आयुक्त (अपील्स **- II)** CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(S S Chowhan)

SUPERINTENDENT (APPEAL-II),

CENTRAL EXCISE, AHMEDABAD.

To, M/s Meghmani Organics Ltd, Block No 402-3-4,452-2-3-4, Post Chharodi, Taluka Sanand, Ahmedabad-382170.

## Copy To:-

- 1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
- 2. The Commissioner, Central Excise Ahmedabad-II, Ahmedabad.
- 3. The Dy./Assistant Commissioner, Division-III, Central Excise Ahmedabad-II Ahmedabad.
- The Assistant Commissioner(Systems), Central Excise Ahmedabad-II, Ahmedabad
- 5. Guard File.
- 6. P.A. File.

