



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th 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(15)66/Ahd-II/Appeals-II/ 2015-16 / 523 to 527
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-098-16-17

दिनांक (Date): 28.02.2017 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-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No . 06/ADC/2015/DSN Dated: 13/08/2015

issued by: Additional Commissioner Central Excise (Div-III), Ahmedabad-II

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

M/s ADI FINECHEM LIMITED

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 ।

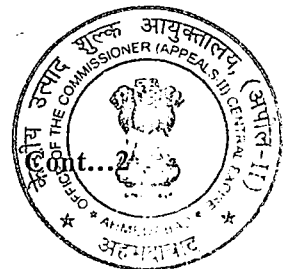
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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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 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 :-

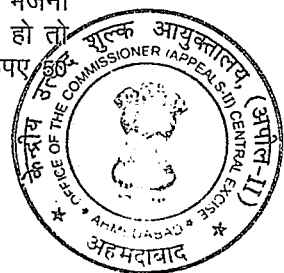
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 मांग 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."



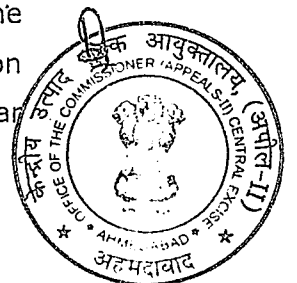
ORDER-IN-APPEAL

M/s Adi Finechem Ltd, 253/P, Chekhala, Sanand Kadi Road, Taluka: Sananad, Dist Ahmedabad-382110 (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No 06/ADC/2015/DSN dated 13.08.2015 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioners of Central Excise, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant is register with the central excise department and engaged in processing of Fatty Acid falling under chapter 38 of Central Excise Traiff Act, 1985. On 29.11.2012 the Appellant vide letter dated 28.11.2012 intimated that major fire accident occur in their factory on 27.11.2012. The reason of fire is yet not known and quantification of damage is yet to be done. The appellant failed to intimate the department within 24 hours of fire accident. The Range officer on 03.12.2012 had drawn a Panchnama to ascertain the actual loss. During the Panchnama the appellant submitted that the cost of material which is lost in the fire in ₹1,05,19,509/-. On 17.01.2013 the appellant submitted following documents.

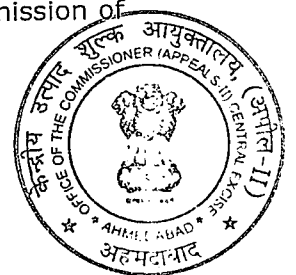
- (a) Police FIR 27.11.2012.
- (b) FIR dated 10.12.2013 issued Ahmedabad Municipal Corporation.
- © Certificate dated 29.11.2012 issued by Kalol Nagarpalika
- (d) Certificate dated 29.11.2012 issued by Sanand Nagarpalika.

On 21.1.2013 the appellant intimated that New India Insurance co. has appointed surveyor for finalization of material lost. On 26.08.2013 Range Superintendent requested the appellant to submit the Insurance Survey Report. On 01.02.2013 the appellant requested to grant two week time to submit the actual loss. On 12.3.2013 the appellant submitted that they have reversed the Cenvat Credit of ₹ 9,86,149/- availed on input used in manufacture of final product lost in the fire. The department requested several times the appellant to submit the Insurance Survey Report and other relevant documents so that actual loss however the same was not submitted. Therefore Summons was issued to Authorised signatory in order to produce relevant documents and recording his statement. Statement of authorized signatory was issued on 23.10.2013 in which he stated that the reason of fire was due to leakage of Thermic fluid which is highly inflammable. Before any precautionary measure could be taken, the fire broke out which was not easily prevented. It is very difficult to quantify the actual damage. No finished goods was destroyed in the fire accident and there was no salvage of finished goods, semi finished goods or Input. They have reversed the Cenvat credit of duty involved in fully destroyed input as well as finished goods. They have voluntarily disclosed the actual damage of input or semi finished goods. They have not paid any interest on late reversal of Cenvat credit as there is no provision in the law. Further it is clear



that lost material dully filed in the HDPE barrels and tanks was marketable. In FIR recorded by the police it was mentioned that finished goods dully filed in the HDPE barrels and tanks were kept in Finished Goods Godown. Merely the same was not entered in the Daily Stock Register (RG-1) then to it cannot be treated as Semi Finished Goods. The Appellant was in a practice that as and when the finished goods required to be cleared then the same was to be entered in the RG-1. From the scrutiny of the Insurance Survey Report, Panchnama drawn by the department and FIR of the police it shows that they have only reversed the Cenvat Credit of duty in guise of Semi finished Goods with intention to evade the duty. The appellant vide letter dated 21.01.2013 intimated that finalization of actual loss occur due to fire they will file application of "Remission of duty". However the same was not filed by them. As per Board Circular No 800/33/2004-CX dated 01.10.2004 credit on excise duty paid on input used in manufacture of final product which duty has been remit due to damage or destruction is not permissible and the dues alongwith interest to be recovered. If Appellant would have taken due care of the leaked pipe line then the accident would have avoided by them. Honble CESTAT in the case of Dharampal Stayopal Vs CCE [2004(167) ELT 291 (CESTAT) SMB] denied the remission on the ground that accident would have been avoided if concern person would have taken due care. During the Panchnama the appellant declare that there were 451 HDPE Barrel however as per insurance survey report it was 162 HDPE Barrel as appellant was not able to satisfactory answer for rest of the HDPE Barrel. Hence it was conclude that stock of 162 HDPE Barrel in insurance survey report is correct. Accordingly a SCN was issued as to why Central Excise Duty of ₹ 17,47,457 availed and utilised in unauthorised matter should not be recovered . Why Cenvat Credit of Duty of ₹ 5,31,762/- should not be recovered. Why instrest should not be recovered. Why penalty should not be imposed. The said SCN was adjudicated by the adjudicating authority vide impugned order confiring all the duty demanded and appropriated all the Cenvat Credit revesed by the appellant. Equivelent penalty was also imposed. Interest at appropriate rate was also demanded.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that order passed by adjudicating authority is not legal and devoid of merits. They further added that they manufacture various finished goods produced at different stage of production from the conversion of same raw material. Hence each and every intermediate product is either sold or converts further. Every finished goods are tailor made and as per the requirement of our buyer. Therefore as and when goods are cleared they are entered in the books. This practice is followed by them since long. No one can quantify the actual amount of loss due to fire. Hence person claiming settlement with insurance authority will inflate figure. So the claim is to be settle to the nearest possible loss. They have filed application for remission of duty before the jurisdictional Commissioner on 25.10.2013 which is pending. Till the jurisdictional Commissioner finalized the application of remission of



duty involving duty more than five lacs, the adjudicating authority cannot adjudicate this case. Further application for remission of duty was withdrawn by the appellant on 03.08.2015 stating that they understand that the word Goods means in Rule 21 of Central Excise Rules, 2002 is finished goods only and it does not include Semi Finished goods. Further on 12.12.2016 they again requested the jurisdictional Commissioner to revive their application in view of Board Circular No 907/27/2009-Cx dated 07.12.2009.

4. Personal hearing in the case was granted on 20.12.2016 which was attended by Appellant representative.

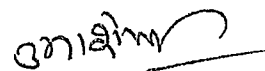
5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. The appellant has filed the present appeal on the ground that the adjudicating authority demanded the duty on the basis of Statement of authorized signatory, Police FIR 27.11.2012 and Insurance Surveyor Report dated 30.09.2013. The department was in a view that the appellant has suppressed the fact that they declare the finished goods as semi finish goods to avoid the payment of duty. The goods destroyed in the fire were actually finished goods though the same was not entered in the (RG-1).

7. I find that Appellant had applied for remission of duty under Rule 21. However the adjudicating authority on the basis of available records demanded the duty involved for the goods destroyed in the fire. It will be premature to come on a conclusion that appellant has not taken due care of the goods destroyed in the fire till the application of remission of duty is finalized by the higher forum. Thus, in view of discussion at Para 6 above and in the fitness of things, it would be just and proper that OIO is set aside and matter is remand back to the adjudicating authority till the outcome of the application of remission of duty.

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

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

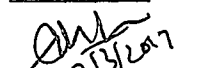


(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S S Chowhan)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,
M/s Adi Finechem Ltd,
253/P, Chekhala, Sanand Kadi Road,
Taluka: Sanand, Dist Ahmedabad-382110.

Copy To:-

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



