



सत्यमेव जयते

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

शुल्क::

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



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)114,115,116&117 /Ahd-II/Appeals-II/ 2015-16 /2324 to 2329
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-02-03-04-05-17-18

दिनांक (Date): 26.05.2017, जारी करने की तारीख (Date of issue): 02/06/17

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. MP/07/2015-16 Dated: 30/12/2015

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 Mony Pumps (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।

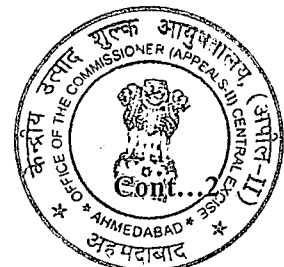
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following- case, governed by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

C. 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 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 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 भेजनी होगी।



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

The subject appeals are filed by 1. M/s. Mony Pumps Private Limited, A/1, 32, 33, Suryoday Estate, Asarva, Ahmedabad .2.Shri Suresh Bhai Vallabhdas Patel[Director] 3. Shri Amarsing Chavda [Proprietor]of Mony Submercible Pumps , Banglore and 4. M/s. S.V. Roadlines ,Ahmedabad (Hereinafter Referred To As 'The Appellants') Against the Order in Original No .MP/07/15-16 (hereinafter referred to as 'the impugned order') passed by the Asstt. Commissioner, Central Excise,div-I, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The first appellant is engaged in the manufacture of submersible pumps under Chapter 84 and Electric Motor under Chapter 85 of the Central Excise Tariff Act,1985. [Hereinafter referred as CETA-1985].

2. Brief facts of the case is that the first appellant has made clearance of finished goods without excise invoices and without excise duty payment, valued Rs. 19,16,033/- involving Excise duty of Rs. 1,26,557/-. Statement of Shri Sureshbhai V. Patel, Director was recorded, he admitted that the goods had been manufactured and cleared by them; and they had neither prepared central excise invoices nor paid the excise duty. Not accounted for excisable goods and had cleared goods to their buyers without Excise invoices, without paying the Central Excise duty and without following proper Central Excise procedure .The duty amount of Rs. 1,26,557/-; interest of Rs. 46,759/- and penalty of Rs. 31,639/- was deposited on 24.02.2014. The Central 'Excise officers of Bangalore-III conducted search of the buyer's premises i.e. M/s. Mony Submersible Pumps, Bangalore on 18.02.2014 .Shri Amar Singh Chavda, Proprietor of the said firm have stated that he has not got any invoices for purchase of said goods. That the said branded pumps/motors had been supplied by the appellant without invoices. The appellant has suppressed the facts and never intimated the department about the clearance of fully finished excisable goods with intent to evade payment of excise duty, during the period from July-2009 to August-2013.it appeared that they have contravened the provision of Rule 4, 5 and Rule 6 of Central Excise Rules, 2002 . All these acts of contravention appeared to have been committed with intent to evade payment of duty by suppressing the facts. Shri Suresh V. Patel, Director being the responsible person was liable for penalty .Shri Amar Singh Chavda. concerned in purchase of the excisable goods from the first appellant without invoice and without payment of excise duty, which he knew that the same are liable for confiscation and therefore rendered himself liable for penal action. The transporter M/s. S.V. Road lines Naroda Road, Ahmedabad concerned in transporting the excisable goods rendered themselves liable for penalty. Show Cause Notices issued. Same was decided vide above OIO and confirmed the demand with penalties.

3. Being aggrieved with the said 0-1-0's all the appellants has preferred appeals on the followings grounds;

a. First appellant has submitted that the accounting and excise related work is being attended by the excise clerk of their firm. However, due to his ill health, he could



not attend the said work during the material time and as such the excisable goods were not properly accounted for. That the said excisable goods were available in the factory premises and were not intended to be cleared out of factory premises. clandestine clearance effected under "Kachcha Chhithis" from factory premises, they would like to state that they have admitted the same on the spot and they have already paid the central excise duty amount of Rs. 1,24,045/- along with the interest amount of Rs. 46,759/- and the amount of penalty @25% of duty which comes to Rs. 31,639/-. the matter may please be decided accordingly.

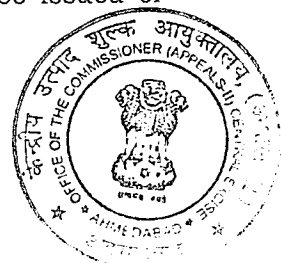
b. They have already paid the central excise duty amount of Rs. 64,371/- along with the interest amount of Rs. 5,000/- and the amount of penalty @25% of duty amount which comes to Rs. 16,093/-. Further, they have also admitted the clandestine clearances made in past to the said firm, i.e. from May-2010 to January-2014 and paid central excise duty of Rs. 30,842/- along with interest amount of Rs. 15,000/- and the amount of penalty @25% of duty amount which comes to Rs. 7,711/-.

c. M/s S. V. Road Lines submitted their reply . That they have transported the goods received from M/s Mony Submersible Pumps to Bangalore. The said goods were received under "Kachcha Chithis. that we are engaged in the transportation of goods from Ahmedabad to Bangalore on the basis of documents provided by their customers. He does not have knowledge of Central Excise and therefore, he has not insisted for the copy of Excise invoice from their customers. Requested to decide the matter by taking lenient view being the transporter of goods.

4. Personal Hearing was fixed on 28.2.2017, and Shri Nimesh Oza, consultant appeared on behalf of all the appellants and reiterated GOA submitted earlier. and submitted a written reply and requested to drop the proceedings in view of Section 11A(7) of Central Excise Act,1944 as they have already paid the duty ,interest and penalty. I have carefully gone through all case records placed before me in the form of Show Cause Notice, the impugned order and written submissions made in GOA as well as submissions made during the personal hearing.

5. I find that, That the appellant relied sub Section (6) of Section 11A — *Any person chargeable with duty under Sub-Section(5) may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under section 11AA and penalty equal to 1% of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of 25% of the duty and inform the C.Ex officer of such payment in writing.*

6. I find that, In view of the above provision and as per sub section 7 of 11A of CEA,1944 not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the C.Ex officer that the amount of duty, interest and penalty as provided under sub-section 6 has been fully paid. The notice has paid all the issue of the SCN and it is admitted fact in the notice. Therefore, in view of the above, no notice is required to be issued or proceedings initiated vide SCN is concluded for all the appellants.



7. I find that, the appellant is not a habitual offender. Such contravention on part of the appellant cannot be termed as with intent to evade payment of duty Further, I find that, the Government has also liberalized the policy to rely on the private records of the assessee. As per para 1.1 of Part —I of Chapter 6 of CBEC's Excise Manual of Supplementary Instructions, the statutory records under Central excise Rules have been 'dispensed with and now it is the Government policy to rely on the private records of the assessee. The relevant para reads as under:-

"1.1 Records are to be maintained in the course of any business activity. These records are also used to determine the tax liability of the assessee. Earlier, for this purpose the Government has prescribed the records to be maintained, popularly referred to as Statutory Records'. The statutory records under Central excise Rules, 1944 were dispensed with in the year 2000 and it was decided to rely on private records of the assessee. This was done as a measure of simplification. While framing the Central Excise Rules, 2002(hereinafter referred to as the said Rules), Cenvat Credit Rules, 2004 and other Aides issued under Central Excise Act, 1944, the Government has continued the policy of relying on the private records of the assessee."

8. I find that, in pursuance of CBEC circular from F. no. 137/46/2015-ST dated 18.08.2015, that waiver of SCN and conclusion of all proceedings under Section 11 AC(1)(d) of Central Excise Act, 1944, against them, after the payment of central excise duty, along with interest and penalty equal to 25% of the duty.

9. In view of the foregoing discussion and findings, I allow the appeals filed by the appellants.

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

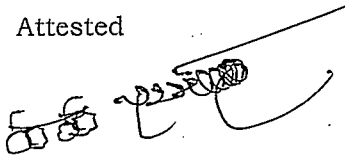
The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar)

Superintendent (Appeals-II)
Central Excise, Ahmedabad



By Regd. Post A. D

1. M/s. Mony Pumps Private Limited,
A/1, 32-33, Suryoday Estate,
Near Tata Godown,
Asarva, Ahmedabad.

2. Shri Suresh Bhai Vallabhadas Patel[Director]
M/s. Mony Pumps Private Limited
A/1, 32-33, Suryoday Estate,
Near Tata Godown,
Asarva, Ahmedabad.

3. Shri Amarsing Chavda[Propictor]
M/S. Mony Submercible Pumps ,
No.8,Gollara Ranganna Lane ,
Nagarathpeth,
Banglore.

4. M/s. S.V. Roadlines
Plot no. 8. Maruti estate,
Anilsrarch Road,
Naroda
,Ahmedabad.

Copy to :

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



