



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(38)104/Ahd-II/Appeals-II/ 2015-16 / 2335 to 2339
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-08-17-18
दिनांक (Date): 29.05.2017 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-), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित.
Arising out of Order-In-Original No. 25/ADC/2015/DSN Dated: 26/11/2015
issued by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

M/s Bharat Bioscience Pvt. 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।

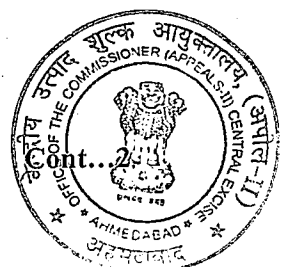
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

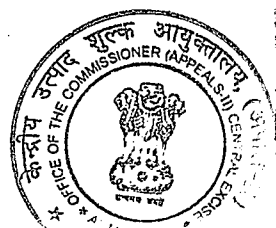
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



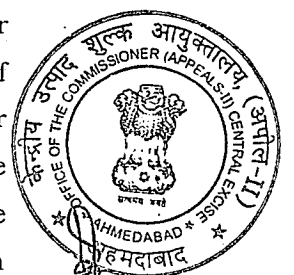
ORDER IN APPEAL

The subject appeal is filed by M/s Bharat Bioscience Pvt. Ltd.79, Ajanta Estate, Village:Vasna(Iyava),Ta-Sanand,Dist-ahmedabad (Hereinafter Referred To As 'The Appellant') Against the Order in Original No. 25/ADC/2015/DSN (hereinafter referred to as 'the impugned order') passed by the Addl. Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Pesticides/Insecticides falling under Heading No. 38 of the Central Excise Tariff Act, 1985.

2. Brief facts of the case is that, DGCEI,Ahmedabad had conducted search of appellant unit. During the FY 2013-14 clearance value of pesticides was Rs. 2,19,65,789/-which was more than threshold exemption limit. They had neither taken excise registration nor paid applicable excise duty. That Appellant cleared the excisable goods at NIL rate of duty. Shri Ambarish Patel was looking after all work relating to production and dispatches of the appellant unit. That they had not paid the applicable Central Excise duty; that they had neither taken Central Excise registration nor paid the applicable Central Excise duty on the value of excisable goods cleared above the threshold exemption limit; therefore, the finished goods were placed under seizure. They obtained Excise Registration on 25/03/2014 and paid duty of Rs.8,75,500/ and interest Rs.3,61,579/- vide GAR-7 challans: that the appellant has contravened the provisions of the Central Excise Act, 1944 and the Rules made there under; that they have failed to obtain Excise Registration after crossing the threshold limit, as provided under SSI exemption Notification and to discharge Central Excise duty on the excisable goods, cleared from their factory premises , and rendered the said seized good valued at Rs.17,29,000/-liable for confiscation, also rendered themselves liable for penalty. Therefore, Show Cause Notice was issued for seizure portion of the case. Goods should not be confiscated along with penalty. SCN was decided vide said orders and confirmed the demand.

3. Being aggrieved with the said OIO,the appellant has preferred this appeal on the followings grounds;

That the appellant is a small scale unit, engaged in the manufacture of pesticides/insecticides. They had neither taken excise registration nor paid applicable excise duty. That as per Rule 25 of CER, the charge for confiscation and imposition of penalty require the ingredient of Section 11AC of CEA for holding confiscation of goods and for imposition of penalty under Rule 25 of CER. In the present case, the charge under Section 11AC of the Act cannot be invoked against the appellant in as much as the appellant did not obtain excise registration



under bonafide belief that being small scale unit, there was no excise duty leviable on the goods manufactured by them. that they obtained excise registration and voluntarily paid excise duty with interest.

That there was no mala fide intention or suppression of fact, collusion or contravening the provisions to evade duty of excise. In fact all the clearances were made under invoices and details of sales were available in books of accounts. With respect to imposition of penalty on Shri Ambarish Patel, Director it is submitted that provisions of Rule 26 of CER can be pressed against a person who had knowledge or had reason to believe that goods dealt with by him were liable to confiscation.

4. Personal hearing was held on 20.12.2016, 28-2-17 and 22-3-17 however nobody appeared on behalf of the appellant. GOA was submitted on 8-2-16. 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. I find that It has been brought out in paragraph 11 of the present show cause notice that the same is being issued for seizure portion of the case against the appellant and imposing of penalty.

5. I find that, That the appellant was engaged in the manufacturing of different kinds of Pesticides, and had not obtained Excise Registration; Shri Ambarish Patel was looking after all work relating to production and dispatches of the appellant unit. after abatement the net clearance value comes was more than the threshold exemption limit; that they had not paid the applicable Central Excise duty; that they had neither taken Central Excise registration nor paid the applicable Central Excise duty on the value of excisable goods cleared above the threshold exemption limit; therefore placed the finished goods under seizure. That even after crossing the threshold exemption limit of Rs.1.5 Crores, they had neither obtained the Central Excise Registration nor paid the Central Excise duty on the clearances of finished goods with intention to evade the Central Excise duty leviable thereon; after inquiry, they had obtained Excise Registration and paid C.Ex.duty with interest.

6. I find that, that the appellant has contravened the provisions of the Central Excise Act, 1944 and the Rules made there under; that they have failed to (i) obtain Excise Registration after crossing the threshold limit, as provided under SSI exemption Notification (ii) to discharge Central Excise duty on the excisable goods, manufactured and cleared from their factory premises after crossing the threshold limit, as provided under SSI exemption Notification No. 08/2003-C.E. dated 01.03.2003, and thereby rendered the said seized goods liable for confiscation and for their willful acts of omissions and commissions they appeared to rendered themselves liable for penalty. Further, there is clear suppression of facts on part of the



appellant with intent to evade payment of duty in this case. The excisable goods lying in the factory premises were placed under seizure since the goods were manufactured at the factory premises of the appellant without obtaining Central Excise Registration, even after crossing the threshold limit of SSI exemption. show cause notice was issued proposing confiscation of seized goods under Rule 25 of CER, 2002 and also proposing penalty on the appellant and proposing personal penalty on Shri Ambarish Patel, Director under Rule 26 of CER, 2002.

7. I find that, it has been contended by the appellant that they were ignorant of law and the lapse being a genuine mistake arising out of ignorance, there was no mala fide on their part and there was no intent to evade payment of Central Excise duty. I find that there is no merit in this plea as the settled legal position as pronouncements by various courts and Tribunals is that *ignorance of law is not an excuse for contravening the provisions of law*. therefore, contravention of law cannot get immunity and consequences will follow. In the present case, the appellant has not contested the claim of the department that different types of Pesticides classifiable under Chapter 38 of CETA,1985 which attracted effective rate of duty @ 12% ad-valorem .The appellant has also not contested the allegation that they had crossed the threshold limit of SSI exemption. the appellant contended that the failure to obtain Excise registration and the clearance of goods without payment of Central Excise duty after crossing the threshold limit of clearance value under said Notification on their part was not by the reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Central Excise Act ,because the lapse had taken place because of ignorance of law. I find that the ground of ignorance of law is not valid or sustainable in law. The provisions of Rule 25 of CER, 2002 is reproduced below;

"Rule 25. Confiscation and penalty. —

(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notification issued under these rules; or

[b] does not account for any excisable goods produced or manufactured or stored by him; or

[c] engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

[d] contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,



then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater. (2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice."

In this case, it is an admitted fact on the part of the appellant that they had contravened the provisions of the CER2002, which make the impugned goods liable to be confiscated and would render the appellant liable to penalty under Rule 25 of CER, 2002. I find that by their acts of omissions and commissions, as discussed above, the penalty imposed on the appellant and the confiscation of the impugned goods is legal and sustainable.

8. Further, I find that Shri Ambrish Patel, Director has admitted their liability and deposited Excise duty along with interest. He has also admitted that all the business matters, including taxation matters were being carried out under his directions and supervision. Thus he had concerned himself with the transporting, removing, depositing, keeping, purchasing or selling etc. and had dealt with the excisable goods which he knew or had reasons to believe that the same were liable for confiscation. Thus penalty imposed is legal.

9. In view of the foregoing discussion and findings, I uphold the Order-in original and disallow the appeal filed by the party.

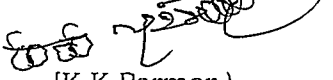
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. 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

M/s. Bharat Bioscience Pvt. Ltd.,
79, Ajanta Estate,
Village: Vasna (Iyava),
Sanand-Viramgam Highway,
Ta-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-III, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard Life.
6. PA file.

