



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th Floor, Central Excise
Building,
Near Polytechnic,
Amcavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(72)89/Ahd-II/Appeals-II/ 2015-16
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-12-17-18
दिनांक (Date): 20.06.2017 जारी करने की तारीख (Date of issue): 29/6/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. 14/AC/DEMAND/15-16 Dated: 30/09/2015
issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad-II.

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

M/s Vikram Industries

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।

CS File



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 appeal is filed by M/s. Vikram Industries Naroda Ahmedabad (Hereinafter Referred To As 'The Appellant') Against the Order in Original No.14/AC/demand/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'). They are engaged in the manufacture of S S Pattas-Pattis falling under Chapter 72 of the Central Excise Tariff Act, 1985.

2. Brief facts of the case is , the appellant was clearing S.S. Cold Rolled Patta Patti on payment of Excise duty at the appropriate rate and clearing the S.S. Hot Rolled Patta Patti under exemption of duty as per Notification No.03/2005 dtd. 24.02,2005 (SI. No.62) superseded by Notification No 12/2012-CE (SI, No. 203) dated 17-03-2012 and by paying an amount equivalent to 5% and 6% as the case may be on the value of the Hot Rolled Patta Patti under the provisions of Rule 6 (3) of the Cenvat Credit Rules, 2004. the Show Cause Notice issued for recovery of Excise duty Rs.96,626/- under section 11A(1) of the CEA1944, With Interest and penalty. Same was decided and confirmed the demand.

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

That S.S patta-patti purchased on payment of duty from the market and sent to Job worker for further process like cutting, annealing and heat treatment. Then product immerges called S.S.Hot Rolled "Patta or Patti". These Hot Rolled Patta Patis are being received in their factory and used within factory for further process of Cold Rolled Products as well as it is also sold to various customers.

The Entry no. 203 of the Notification No. 12/2012 C.E. clearly described the products "Pattis or Pattas" when subjected to any process other than cold rolling. Meaning thereby all the stage (i.e. cutting, annealing, Hot Rolling, etc) attracts NIL Rate of duty under the said Notification,. The appellant relied upon the Board's Circular M.E(D.R.) No. B/31/8/94-TRU, dated 04-05-1994. There is no such commodity i.e. HOT ROLLED PATTIS-PATTAS available in the market on which further any process other than cold rolling is to be carried out.

The tariff sub heading 7219.30 and 7220.30 are typically existing in the Indian Tariff and does not find a place in the HSN. There is internal indication in the said tariff entry to this effect. The same read as follows.

"patta/patties when subjected to any process other than cold rolling"

The classification of S.S. Hot Rolled Pattas-Pattis was challenged under the new tariff introduced in tariff itself i.e. 7219.30 and 7220.30 by the department and the Hon'ble Tribunal took view that Hot Rolled Pattis Pattas are classifiable under Chapter sub-heading No. 7219.30.



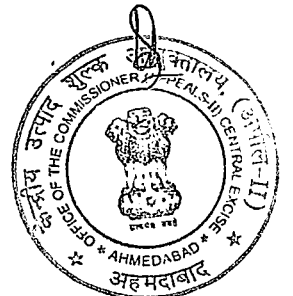
Further, they also relied upon the decisions of CESTAT in case of M.K. Industries (272) ELT 125 (Tri.-Ahmd), in case of M/s. Metweld Industries order No. A/860/WZB/AHD/2009 dt. 24-4-2009 and OIA No. 232 to 236/2005 (232 to 236-A-II)CE/DK/Commr(A) dt. 3-1-2006 and 138/2006 (AM-II)CE/DK/Commr(A) dt. 18-5-2006 in case of Mangaldeep Metal and M/s. Shayona Enterprise, Divyang Rolling Mills.and also Board 's Circular M.E(D.R.) F.No. B/31/8/94-TRU,dated 4-5-1994.decision passed by the Commissioner (Appeal- V), Ahmedabad in case of M/s Ram dev Sheet Rolling Mill Vatva, Ahmedabad vide OIA No.V2 (72) 101/Ahd-12013-14; dtd. 11/7/2014. The said view finds preponderance in light of the judgment of the Hon'ble Supreme Court in the case of Oblum Electrical Industries Private Limited v Collector of Customs Bombay - 1997 (94) E.L.T. 449 (S.C.)

That the goods cleared by the appellant without payment of duty, should not be held liable for confiscation under Rule 25 of C.Ex. Rules 2002 ,as the subject goods attract Nil Rate of Duty and not cleared without payment of duty. they rely upon the decision of the Hon'ble Tribunal in the case of Shivkrupa Ispat Pvt. Ltd Vs. Commr of C.Ex. Nashik 2009 (235) ELT 623 (Fri LB).Ramdev Sheet Rolling OIA NO. V2[72]AHD12-13/14 DTD.11-7-14.

That penalty imposed is not sustainable as they have cleared the subject goods at Nil Rate of duty which has been declared every financial year and also in ER-1 Return filed by them. They relied upon decision of Commr: Of C.Ex. Vs. Saurashtra Cement Ltd 12010(360)FLT71 (Guj)] .the appellant had as far back as in the every year informed the Department by way of filing intimation and ER-1 Returns about the clearance of their product and the Department was aware of the activities of appellant. When duty is not payable then question does not arise to pay any interest.

4. Personal hearing was accorded on 28.2.2017.Shri Harshad Patel Advocate attended personal hearing on behalf the appellant. He reiterated the submissions made in their GOA and invited attention towards following 1. OIA No.AHM-EXCUS - 001 APP-28/14-15 2. Circular No. B/31/8/94-TRU DT.4-5-94.And Tariff Conf. Decision. I have carefully gone through the show cause notice, documents available on record, Written Submissions made in their appeal as well as submissions made during Personal Hearing.

5. I find that the appellant is engaged in the manufacture of Stainless Steel Hot Rolled Pattas - Pattis chargeable to Nil Excise Duty under Central Excise Tariff and nil normal Rate of duty. The period of dispute in the present appeal is January 2014 to September 2014. The Appellants were discharging duty liability under NIL Rate of duty vide Notification No. 03/2005-C.E. and Notification No. 12/2012--C.E., dated 17.03.2012. the Appellants cleared S.S. Hot Rolled Patttas-Pattis at NIL Rate of duty but by paying an amount equal to 5% and 6% as the case may be on the value of such S.S.Hot Rolled Patttas-Pattis under the provisions of Rule 6(3) of the

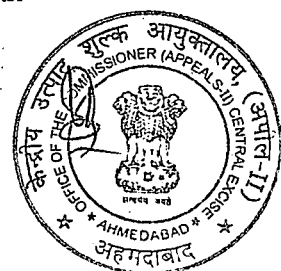


Cenvat Credit Rules, the provisions of Cenvat Credit Rules, 2004, and appellant has also cleared S.S.Cold Rolled Paatas-Pattis on payment of Central Excise duty at the appropriate rate with cenvat facility. It is pertinent to note here that Appellant has also declared this fact in the Returns filed by them from time to time.

6. I find that, the Show Cause Notice was issued alleging that the Exemption to "Pattas Paatis" is conditional exemption. To get the Exemption from duty on pattas-Pattis, the same should be subjected to any process other than cold Rolling. It was claimed by the department that no further process is being carried out On Hot Rolled Pattas-Paatis Other Than Cold Rolling by the appellant. The condition to avail the duty Exemption under the said notification ibid, the pattas-Pattis should be subjected to any process other than cold rolling . I find from the manufacturing process that the appellant are purchasing SS flat which is their input and which are sent by them to various job workers where they cut it in to sizes and undergo the process of annealing, picking, hot rolling and etc and hot rolled patta patties emerges which are sent back by the job workers to them. The appellant clear the SS hot rolled patta patties as such to cold rolling mills who undertake the cold rolling process and cold roll the same.

7. I find that the process mentioned against Entry Sr.No.203 of Noti.No.12/2012-CE follows the description of the goods as patta-patti, as such the goods have to be first patta-patti to fall under the said entry of the Notification. Further the said entry under the Notification has internal indication that it deals with the basic activity of manufacture of hot rolled patta patti as it excludes Cold rolling from the purview of other process. I find that the adjudicating authority has erred in his findings that the further process other than cold rolling should be carried out on Hot Rolled patta patti before the same were cleared from factory i.e. patta patti should be subjected to any process other than cold rolling. The reading of the entire entry of Noti,No.12/2012-CE shows that the patta-patti when subjected to any process other than Cold rolling would continue to fall under the said entry.

8. I find that that the entry in Noti.No.12/2012-CE covers "Patta-Patti which subjected to any process other than cold rolling" is that it would cover these semi processed patta-patti which are yet to be subjected to cold rolling to manufactured finished patta-patti and it would not cover those patta-patti which are subjected to cold rolling as appears from the plain reading of entries of the said notification. I find that the tariff sub heading 7220.30 referred to in the Central Excise Tariff do not find a place in HSN. This was created to specifically accommodate the existence of the product recognized in Indian market as patta/patties. I find that tariff sub heading 7220.30 exclude the process cold rolling from the general process stated therein; that if the exclusion was not there, cold rolling would have been considered as other process described under the said tariff. In as much as cold rolling is primary/essential process for manufacture of patta/patties. Thus, other process describes sub heading 7220.30 clearly refers to primary process employed. The logical conclusion that can

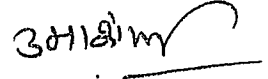


be derived for classification of product under tariff sub-heading 7220.30 which covers "Pattas/patties which subjected to any process other than cold rolling" is that it would covers those semi processed patta/patties which are yet to be subjected to cold rolling to manufacture finished patta/patties .in view of the above discussion and findings, I hold that appellants have correctly availed the benefit of Noti.No.12/2012-CE(Sr.NO.203). I rely upon the decisions of CESTAT in case of 1. M.K. Industries (272) ELT 125(Tri.-Ahmd), 2.M/s. Metweld Industries order No. A/860/WZB/AHD/2009 and also Board Circular M.E(D.R.) F.No. B/31/8/94-TRU,dated 4-5-1994, and OIA Passed by commr,(Appeal-V), Ahmedabad in case of M/s Ram dev Sheet Rolling Mills ,Ahmedabad vide OIA No.V2 (72) 101/Ahd-I/2013-14; dtd. 11/7/2014.As regards interest and Penalty imposed, I held that since the demand is not sustainable, there is no question of interest and penalty, as held by the Hon'ble Supreme Court of India in case of Collector Vs HMM Ltd. 1995(76) ELT 497(SC).

9 In view of the above findings, I set aside the impugned order and allow the appeal filed by the appellant.

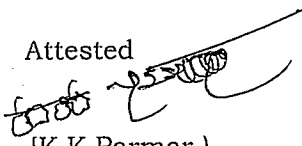
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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 Ad.

M/S. Vikram Industries.
901,Phase-IV,
GIDC, Naroda,
Ahmedabad.

Copy to :

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

