



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(35)154/Ahd-II/Appeals-II/ 2016-17 / 490-94

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 270-17-18

दिनांक (Date): 15.01.2018 जारी करने की तारीख (Date of issue): 24/01/18

श्री उमा शंकर, आयुक्त(अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

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/04-05/OA/2016-17_ Dated: 27.01.2017

issued by: Assistant Commissioner Central Excise (Div-V), Ahmedabad-II

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

M/s Mauni Moon Multi Technologies 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 ।

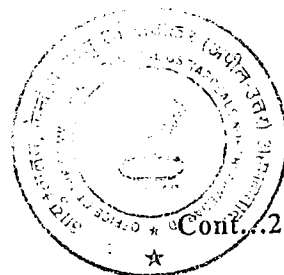
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jaevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

A. 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 ६ 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 मैन्टल 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 इ.ए-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



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 पढ़ी 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।

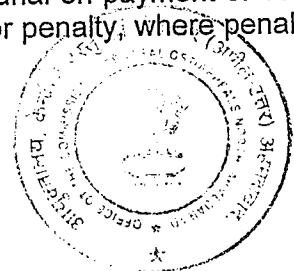
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

M/s Mauni Moon Multi Technologies Private Limited, 35, Vasupujya Bungalows, Opposite: Fun Republic, Satellite, Ahmedabad (hereinafter referred to as 'the appellant'), was holding Registration a **Merchant Exporter** and had executed B-1 General Bonds (Surety / Security) for Rs.5,20,000/- and Rs.1,20,000/-, which was accepted by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad and renewed from time to time. In respect of the aforesaid bonds, the appellant had submitted Fixed Deposit Receipts amounting to Rs.1,30,000/- from A/c No.29514014818 dated 21/01/2014 and Rs.30,000/- from A/c No.006714101100 dated 04/06/2014, both issued by M/s ICICI Bank.

2. The appellant had obtained two C.T.1s each for the aforementioned two Bonds for procurement of excisable goods without payment of Central Excise duty for export under Notification No. 42/2001-CE(NT) dated 26/06/2001. The proof of export in respect of both the C.T.1s were submitted by the appellant on 05/09/2014. It was observed by the department that the appellant had procured '*Aluminium Collapsible Printed Tubes*' and '*Rubber Adhesives*' CETH 76121030 and 35069100 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) for export under the said C.T.1s but the description mentioned in the respective Shipping Bills (SBs) was '*Rubber adhesive tubes suitable for use as glues or adhesives, put up for retail sale as glues or adhesives having tariff heading 35061000*'. Thus the description of goods in the C.T.1s and ARE-1 was found not matching with the description in the corresponding Shipping Bills. It appeared that the appellant had procured excisable goods falling under CETH 76121030 and 35069100 of CETA, 1985 from M/s Parth Multi Tech Pvt. Ltd. and M/s Yug Décor Pvt. Ltd. without payment of Central Excise duty under C.T.1s but proof of export produced by the appellant was in respect of goods falling under CETH 35061000 as per export invoice. Therefore, two Show Cause Notices (hereinafter referred to as 'the SCNs') viz. (i) F. No. IV(5)/Div.V/22/2014-15/part-II dated 15/06/2016 and (ii) F. No. IV(5)/Div.V/22/2014-15 dated 15/06/2016 were issued proposing to invoke the B-1 Bonds and demanding Central Excise duties involved in the C.T.1s along with interest to be realised by encashing the Security Deposits furnished by the appellant and proposing to impose penalty on the appellant under Rule 27 of Central Excise Rules, 2002 (CER, 2002). The SCNs were adjudicated by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority') who has issued Order-in-original No. MP/04-05/OA/2016-17 dated 27/01/2017 (hereinafter referred to as 'the impugned order'), where the demand of Central Excise duties amounting to Rs.5,12,250/- and Rs.1,20,000/- (total Rs.6,32,250/-) have been confirmed under Section 11A(4) of the Central Excise Act, 1944 (CEA, 1944) by invoking the Bonds and encashing Security Deposits; the levy of interest has been confirmed under Section 11AA of CEA, 1944 and a penalty of Rs.5,000/- has been imposed on the appellant under Rule 27 of the Central Excise Rules, 2002.



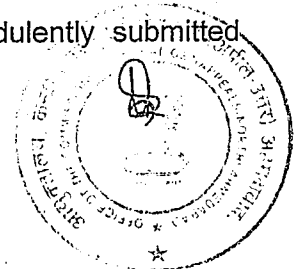
3. Aggrieved by the impugned order the appellant has filed the present appeal on the following grounds:

1) With respect to the impugned order stating that the appellant had not exported goods procured without payment of Central Excise duty, the appellant had submitted proof of export such as P.O. copy, BRC amount tallying with Shipping Bill amount and ARE-1 duly signed and stamped by the officer at the Port in charge of the exported goods. This order was booked by the appellant's father who was the whole and sole working Director in the company, who had met with a road accident and after brain hemorrhage, had passed away after one and a half months on ventilator. Meanwhile, being new in work, the order was looked after by the appellant and it was an error of mentioning exact specification on shipping bill. Due to sudden rush to fulfill importer's order, the appellant had shipped excess quantity of goods that ordered and the excess goods had to be retained at DELHI KTD and fixed deposit of Rs.30,000/- was furnished to procure more goods. In case the appellant had *mala fide* intension, it would not have furnished fixed deposit for which it was not earning interest since 2014 even when fund of Rs.10,00,000/- was borrowed to pay the hospital bills. This error was a purely one time human error due to the sudden demise of the person handling the business and the company is not in a good shape to bear the huge amount of dues.

4. Personal hearing in the case was held on 01/12/2017 attended by Ms Amita Jindal, Director and authorized signatory. Ms. Jindal reiterated the grounds of appeal. She showed the copies of AR-4 and Shipping Bills, which is not clear and explained the reason for mismatch of description because of ignorance. But the AR4 was mentioned in the Shipping Bill.

5. Ms. Amita Jindal, Director and authorized signatory of the appellant submitted additional submissions on 22/12/2017 where the grounds of appeal have been reiterated. The appellant has explained that the discrepancy in ARE-1 and Shipping Bills is only because the input 'Rubber Adhesives' was packed into 'Aluminium collapsible Printed Tubes' and then shown as 'Rubber Adhesive Tubes' classified under CETSH 350610000 in all export papers. The appellant has contended that the impugned order does not dispute the export of 'Rubber Adhesive Tubes. Other than these goods, there was no other sale or export by the appellant. The relevant shipping bill has the reference of correct description and classification. All export documents and the Bill of lading also supports these facts and the buyer has confirmed having received the goods. Relevant eBRC has been received for the goods exported and incentives received are reflected in the books of accounts. It has been contended that no other goods were exported and the procedural lapses are required to be condoned for allowing substantive benefits as there was no evidence of diversion of goods procured in CT-1 elsewhere in the market or any *mala fide* intention for evading duty.

6. Having carefully gone through the impugned order, the grounds of appeal and the additional submissions, it is seen that the demand for Central Excise duty in respect of the goods procured for export by the appellant under the cover of C.T.-1 has been confirmed holding that instead of exporting the goods procured duty free under C.T.-1s, some other goods were exported and proof of export was fraudulently submitted



showing fulfillment of export obligation. However, no evidence has been adduced to establish the fraudulent act by the appellant other than the variance in description of goods in the C.T.1s and the export documents. The appellant has on the other hand explained in the grounds of appeal and the additional submissions that 'Rubber Adhesives' was packed into 'Aluminium collapsible Printed Tubes' and then shown as 'Rubber Adhesive Tubes' and correctly reflected in all export papers. The appellant has also pointed out that the description of goods in ARE-1s matches with the description of goods procured under C.T.1s. These ARE-1s are duly endorsed by the Customs officer at the relevant ICD. A letter dated 04/12/2017 was issued to the jurisdictional Assistant Commissioner seeking clarification as to why the duly endorsed ARE-1s cannot be treated as proof of export. But no response has been received in this regard. Therefore, in order to verify the contention of the appellant regarding packing of 'Rubber Adhesives' into 'Aluminium collapsible Printed Tubes' giving rise to 'Rubber Adhesive Tubes' on job work basis and also to give a finding as to why the duly endorsed ARE-1s cannot be considered as Proof of Export, the case is remanded back to the adjudicating authority with directions to pass a reasoned order taking into account all the defence submissions made by the appellant in accordance with principles of natural justice.

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

The appeal filed by the appellant stands disposed of in the above terms.

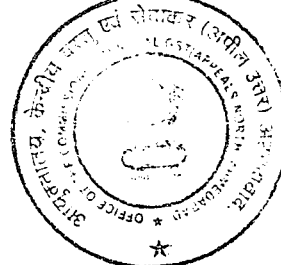
उमा शंकर

(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: / / 2018



Attested

(K.P. Jacob)

(K.P. Jacob)
Superintendent, Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

To

M/s Mauni Moon Multi Technologies Private Limited,
35, Vasupujya Bungalows, Opposite: Fund Republic,
Ramdevnagar, Satellite,
Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (South).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (South).
4. The A.C / D.C., C.G.S.T Division: VII, Ahmedabad (South).
5. Guard File.
6. P.A.