



केंद्रीय कर आयुक्त (अपील)



सत्यमेव जयते

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

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

☎: 079-26305065

टेलीफैक्स 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)1/North/Appeals/ 2017-18 . 115270
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 306-17-18 11561

दिनांक (Date): 30/01/2018 जारी करने की तारीख (Date of issue): 20/2/2018

श्री उमा शंकर, आयुक्त (अपील-II) 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/18-19/2017-18/Rebate Dated: 28/04/2017
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 Radiant Flow Engineers

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 ।

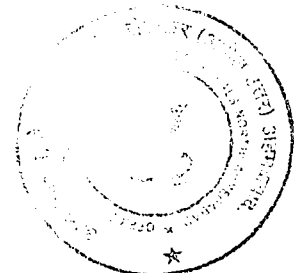
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

A: pte



Cont...2

- (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 :-

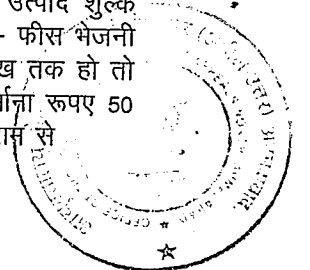
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 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 Appellant 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 अनुसूचि-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।

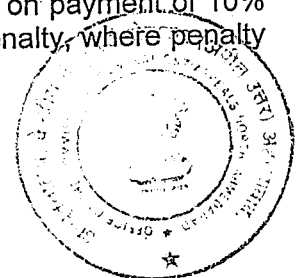
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

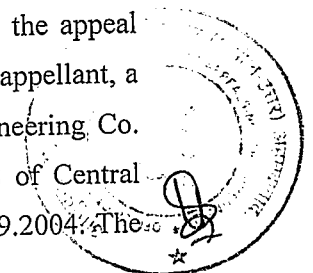
M/s. Radiant Flow Engineers, 17, Ajmeri Sahakari Udyog Nagar, Dhobi Ghat, O/s Shahpur Gate, Ahmedabad- 380004 (*hereinafter referred to as the 'appellant'*) has filed the present appeal against the Orders-in-Original MP/18-19/2017-18/Rebate dated 28.04.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Div-V, Central Excise, Ahmedabad-II Commissionerate. (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, is that the appellant, a merchant exporter is engaged in export of goods procured by them from M/s. Wellworth Engineering Co. Pvt. Ltd., a registered dealer on claim of rebate of duty under Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE (NT) dated 06.09.2004. The goods exported were originally manufactured by M/s. Crane Process Flow Technologies. The appellant filed two rebate claims in respect of ARE-1s 01/14.07.2016 & 02/30.07.2016 along with the relevant documents. On scrutiny of the documents, it was noticed that the appellant, a merchant exporter exported the goods under self sealing; that they had not intimated the jurisdictional range officer and had not submitted the triplicate copies of ARE-1s to the Range office. Consequently, a show cause notice was issued to the appellant for rejecting the rebate claim on the grounds that they failed to follow the condition 2 (a) and 3(a) (iii) of Notification No. 19/2004-CE (NT) dated 06.09.2004; that they failed to follow the condition Nos. 1 (i) and 1 (ii) prescribed under chapter 8 i.e "Export under claim for Rebate" of CBEC Manual and the adjudicating authority vide the impugned order rejected the rebate claims.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they have exported the goods first time and due to lack of knowledge, they failed to follow procedures prescribed in notification No. 19/2004-CE (NT) dated 06.09.2004 and in CBEC circular 294/10/94 dated 30.01.1997 and they had relied on case laws in the case of M/s. Sanket Industries Ltd. [2011 (268) ELT 125 (GOI)], M/s. Binny Ltd. [1987 (31) ELT 722 (Tri.)], M/s. Shrenik Pharma Ltd [2012 (281) ELT 477 (GOI)], M/s. Vinergy International Pvt. Ltd. [2012 (278) ELT 407 (GOI)] wherein it is held that the core requirement for rebate is manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned.

4. Personal hearing in the matter was held on 11.01.2018 wherein Shri Anshul Nanavati, partner and Shri Nilesh Modi, legal advisor appeared on behalf of the appellant. They reiterated the grounds of appeal and further requested to allow the appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during the personal hearing. In the instant case, the appellant, a merchant exporter exported the goods procured from M/s. Wellworth Engineering Co. Pvt. Ltd. (registered dealer) under claim of rebate of duty under Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE (NT) dated 06.09.2004. The



goods exported were originally manufactured by M/s. Crane Process Flow Technologies. The appellant filed 2 rebate claims on 22.11.2016. The adjudicating authority rejected the rebate claims on the grounds discussed in Para 2 *supra*. While rejecting the claim, the adjudicating authority has relied on Government of India's revision application order No. 1369/13-CX dated 30.10.2013 in case of M/s. Denn Exports, New Delhi.

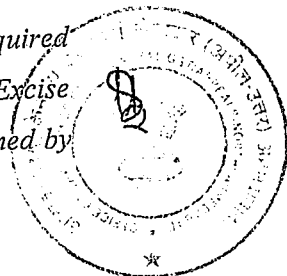
6. In the instant case, I observe that the appellant, after procuring the goods from M/s. Wellworth Engineering Co. Pvt. Ltd., a registered dealer exported the goods under self removal procedure. I observe that the Notification No. 19/2004-CE (NT) dated 06.09.2004 prescribes that the goods procured by a merchant exporter other than those from factory/warehouse of the manufacturer shall be sealed at the place of dispatch by a Central Excise Officer. The relevant text of notification, is reproduced below for ease of reference:

Para 3(a) (iii) The merchant exporters other than those procuring the goods directly from the factory or warehouse shall export the goods sealed at the place of dispatch by a Central Excise Officer.

6.1 From the facts of the case and records, I find that the appellant did not follow the procedure prescribed in the notification *ibid* and also not followed the procedure prescribed under Circular No. 294/10/94-CX dated 30.01.97 by not submitting triplicate copies of the aforementioned ARE-1s to the concerned range superintendent. The purpose of following above procedure is to ensure that proper duty has been paid by the manufacturer at the time of clearance of goods and to establish that duty paid goods have been exported.

6.2 My view is also supported by Government of India revision application order No. 1369/13-CX dated 30.10.2013 in the case of Denn Exports, New Delhi wherein it was held in Para 9 of the order that :

"the government notes that CBEC vide circular No. 294/10/97-CX dated 30.01.1997 has prescribed the procedure to be followed when goods are exported from a place other than factory. Applicant has not followed the said procedure. In such a situation the export of duty paid goods cannot be established. The claimant has to follow the statutory provisions of law and laid down procedure to claim rebate of duty. Non compliance of condition/procedure of Notification No. 19/2004-CE (NT) dated 06.09.2004 renders the rebate inadmissible. The claimant in such a situation cannot simply claim without any documentary evidence, central excise certification that goods are duty paid. The verification of payment of duty takes place through laid down procedure which appellant failed to follow. The fundamental condition of export of duty paid goods is required to be satisfied for granting rebate of duty under Rule 18 of Central Excise Rules, 2002. In this case neither the duty payment has been confirmed by



the documents submitted by the applicant nor the prescribed procedure/conditions was complied and therefore the rebate claim is rightly rejected by the lower authorities."

7. I find that the appellant relies on various case laws/judgements, stating that the failure on part of the appellant is only a procedure lapse which is not correct and not acceptable. The case laws reflected that when the duty payment is not questioned by the department, rebate cannot be denied for the reasons of procedural lapse. In the instant case, I find that the department has questioned duty payment of exported goods and the appellant failed to establish the said fact. Therefore, the decisions relied on by the appellant is not applicable. I, therefore, hold that the appellant is not eligible for the rebate claim for the reasons discussed above.

8. In view of above discussion and following the decision of Government of India *supra*, I upheld the order passed by the adjudicating authority. Accordingly, the appeal filed by the appellant is rejected.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant stands disposed of in above terms.

उमाशंकर
(उमा शंकर)
आयुक्त (अपील्स)

Attested

K.K. Parmar
(K.K Parmar)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY R.P.A.D.

To,
M/s. Radiant Flow Engineers,
17, Ajmeri Sahakari Udyog Nagar,
Dhobi Ghat, O/s Shahpur Gate,
Ahmedabad- 380004.

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad North.
3. The Additional Commissioner,(Systems) Central Excise, Ahmedabad North.
4. The Dy./Asstt. Commissioner, Central Excise, Division -V, Ahmedabad North.
5. Guard file
6. P. A. file.

