

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
	079-26305065	 079-26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)6 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 346-17-18

दिनांक (Date): 27-Feb-2018 जारी करने की तारीख (Date of issue): 23-3-2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 321/Reb/III/17-18 Dated: 15/05/2017

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

M/s Inbisco India Private Limited

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।

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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 मैटल 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 Compund, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्ट्रार 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 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 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।

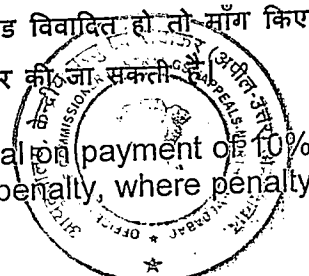
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



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F.No.V2(84)b/NORTH/Appeals/17-18

ORDER IN APPEAL

The subject appeal is filed by M/s. Inbisco India Pvt. Ltd., Plot No. SM-9/5, GIDC Sanand, Phase-II, Ahmedabad (hereinafter referred to as 'the appellant') against Order in Original No. 321/Reb/III/17-18 (hereinafter referred to as 'the impugned order') passed by the Asstt. Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). and engaged in the manufacture of confectionery products falling under chapter 17,18,19 of Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985], The appellant avails credit of duty paid on inputs/capital goods and input services as provided in the Cenvat Credit Rules, 2004. (the CCR 2004).

2. Briefly stated facts of the case are that the appellant has exported used machines under cover of ARE-1 No. 004 dated 12/05/2016 While doing so, the appellant reversed an amount equal to the cenvat credit taken at the time of procurement after depreciation, and applied for the rebate of the amount reversed with vide application dated 15.02.2017, under claim for REBATE of duty paid thereon under Rule 18 of the CER.2004. the appellant has filed Rebate claim, of duty originally paid on export amounting to Rs.54,19,326/- by utilizing the available Cenvat credit. Same was considered as reversal of duty as per rule 3(5) of CCR,2004, and issued Show cause notice dated 22/03/2017. That any reversal under rule 3(5) of CCR,2004 is not to be considered as "duty" paid for the purpose granting of Rebate. vide above order rejected the claim.

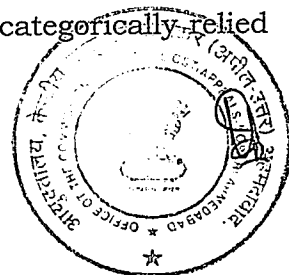
3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following main grounds;

a. that appellant had not asked for rebate of reversal of duty done under rule 3(5) of CCR,2004 rather appellant has asked for rebate of duty paid by utilization of cenvat credit. They relied upon decisions and Board's clarification having contention that Rule 3(5) of CCR,2004 is not applicable on export of capital goods either under Rule-18 or Rule -19 of CER,

b. that rule 3(5) and 3(5A) of CCR, 2004 are not applicable on them and they have never done the reversal of cenvat credit by following that provisions. So the question to decide by the adjudicating authority is that, whether Rule 3(5) and Rule 3(5A) are applicable or not when the capital goods are exported without payment of duty under Rule 18 of CER, 2002.

c. It is assumed by the adjudicating authority that debit entry made in RG-23A Part- II is for reversal of credit as required under Rule 3(5) of CCR, 2004. that there no documentary evidence including the excise returns filed by the appellant. The appellant was never required to reverse any such credit under rule 3(5).

d. Adjudicating authority has failed to verify the documents and entire order has been passed on the assumption of reversal of CENVAT credit, which has been not taken place. The impugned order is non speaking, since the appellant has categorically relied on various decisions which are not taken in notice.



e. They relied upon decision of hon'ble CESTAT in the case of 1. Videocon International Ltd. {2009(235)ELT135 (tri.Ahmd.) 2. Mumbai CESTAT in the case of Glass & Ceramic Decorators {2014(9)TM1864-(Tri- Mumbai)}.The adjudicating authority have not referred the decisions and passed the order which is not tenable in the eyes of law.

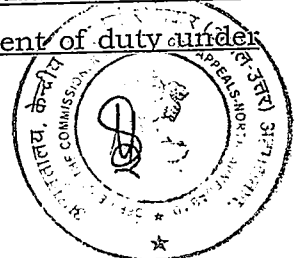
4. Personal hearing was accorded on dated 23.1.2018, Shri J.N.Bhagat,Adv. Pratik Shah CA,and Ritesh Thakur (Manager) appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. I have carefully gone through the case records, facts of the case, submission made by the appellant at the time of personal hearing and the case laws cited by the appellant.

5. I find that, that the appellant has exported used machines under cover of ARE-1 No. 004 dated 12/05/2016 While doing so, the appellant reversed an amount equal to the cenvat credit taken at the time of procurement after depreciation, and applied for the rebate of the amount reversed vide application dated 15.02.2017, under claim for REBATE of duty paid under Rule 18 of the CER.2004. the appellant has claimed the rebate of duty originally paid on export amounting to Rs.54,19,326/- by utilizing the available Cenvat credit. Same was considered the utilization of credit for payment of duty as reversal of duty as per rule 3(5) of CCR,2004 ,and issued Show cause notice. that any reversal under rule 3(5) of CCR,2004 is not to be considered as "duty" paid for the purpose granting of Rebate under Rule 18 of CER, 2002. Vide above order rejected the claim.

6. I find that, The Adjudicating Authority has passed the impugned order and rejected the claim of rebate by assuming utilization of CENVAT credit balance as reversal of credit made under Rule 3(5) of CCR 2004, which is in clear disregards to the instructions and the policy of the Government that export should not be loaded with the taxes.

7. I find that, the adjudicating authority has failed to understand the question which is to be decided by applying the harmonious reading of various provisions of the Act and also the settled decisions relevant to the facts of this case. The order is not proper, and without considering the fact on record, thus, the order required to set aside in the interest of justice.

8. I find that, that manufacturer is not required to reverse any credit taken on capital goods, when the same are removed for export under Rule 19 of CER,2002 and if the assessee chooses to export the goods under Rule 18 of CER, 2002, he is entitled to get the rebate of duty paid. In present case also, rule 3(5) and rule 3(5A) is not applicable to the appellant. The appellant has never done the reversal of credit under such rule, rather has made payment of duty as payable under rule 18 of CER,2002 on export of capital goods under claim for rebate of duty. I find that, the appellant has contested that rule 3(5) and 3(5A) of CCR, 2004 are not applicable on them .So, the question to decide by the adjudicating authority is whether Rule 3(5) and Rule 3(5A) are applicable or not when the capital goods are exported without payment of duty under Rule 18 of CER, 2002.



9. I find that, it is assumed by the adjudicating authority that debit entry made in R-23A Part- II is for reversal of credit as required under Rule 3(5) of CCR, 2004. That there is no documentary evidence including the excise returns filed by the appellant. the adjudicating authority has decided issue whether the amount reversed under rule 3(5) of the cenvat credit rules 2004 can be considered as "duty" for the granting of rebate under rule 18 of the Central Excise Rules, 2002. Thus, it is evident that the impugned order has been passed without understanding the question to be decided. He has failed to verify the documents and entire order has been passed based on the assumption of reversal of CENVAT credit. The impugned order is non correct, since the appellant has categorically relied on various decisions, which are not examined by the adjudicating authority while passing the impugned order. Thus, I find this order is fit case for remand in the interest of justice. Therefore, I remand the case back to the original authority to examine it fresh and pass a reasoned order, after affording opportunity of personal hearing to the appellant, they will provide entire documents they wishes to rely upon within 30 days of receiving of this order.

10. In view of the foregoing discussion and findings, I remand the matter back to the original authority for fresh decision.

11. 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

(उमा शंकर)

आयुक्त (अपील्स)

Attested

[Signature]

[K.K.Parmar)
Superintendent (Appeals)
Central tax, Ahmedabad.

Date- /2/18

By Regd. Post A. D

M/s. Inbisco India Pvt. Ltd.,

Plot No. SM-9/5, Phase-2,

GIDC, Sanand,

Dist- Ahmedabad- 382170

Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt. Commissioner, CGST C.EX Div-III, Ahmedabad- North.
4. The Asstt. Commissioner (Systems), CGST C.EX. Ahmedabad-North.
5. Guard file.
6. PA File.

