

0/0 THE COMVISSIONER (APPEALS). CENTRAL TAX, केदीय उत्पद शुल्क भवन, 7^d Eloor, Central Excise Building Near Polytechnic

मातवीः माजितः, पोलिटेकिनिकः केः पासः, Ambayadi, Alimedabad 38001!

आस्बावाडी: अहमदाबाद=380015

टेलेफेक्स :: 079:-- 2.63.05.136

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क फाइल संख्या (File No.): V2(52)25,45 & 68 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): <u>AHM-EXCUS-002-APP- 382 to 384-17-18</u> दिनांक (Date): <u>22-Mar-2018</u> जारी करने की तारीख (Date of issue): <u>S/C/-/2019</u> 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 643-679/Reb/IV/17-18 Dated: 28/06/2017, 110-178/Reb/II/17-18 Dated: 07/09/2017 & 450-475/Reb/II/17-18 Dated: 08/11/2017 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 Kikani Exports 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 |

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(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 डयूटी केडिट 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 प्रपन्न संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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 रूपये या उससे कम हो तो रूपये 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
- 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, मेघाणी 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.

रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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-litem 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 in 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 अपीलो 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

Three appeals filed by M/s Kikani Exports Pvt. Ltd., Survey No. 774/P, 773, Simej, Dholka, District: Ahmedabad (hereinafter referred to as 'the appellant') are taken up together in the instant order. In the matter of all the three appeals, the Rebate claims filed by the appellant were rejected by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter 'the adjudicating authority'), on the ground that the appellant had availed drawback at higher rate i.e. for Customs, Central Excise and Service Tax portions. The details of the Orders-in-original against, which the appellant has preferred that instant appeals (the impugned O.I.Os.) are as follows:

	O LO N and Date
SI.No.	O.I.O. No. and Date
1.	O.I.O.No.643-679/Reb/IV/17-18 dated 28/06/2017
2.	O.I.O.No.110-178/Reb/II/17-18 dated 27/09/2017
3.	O.I.O.No.110-178/Reb/II/17-18 dated 24/08/2017

- 2. The principal grounds of appeal failed by the appellant are as follows:
 - 1) The adjudicating authority had rejected the rebate claims only on the ground that it is held in Ragahv Industries Ltd. vs U.O.I. - 2016 (334) ELT 584 (Mad.) that availing drawback as well as rebate benefits would result in double benefit to the exporter without appreciating that the said case law involves the period of F.Y. 2011-12 during which the exports were made and all industry rates of drawback were determined by the Central Government during that period vide Notification No. 68/2011-Cus.(NT) dated 22/9/2011. In this judgment of the Hon'ble High Court of Madras, the appellant -had availed CENVAT facility on inputs and input services. The appellant in the present case had not availed CENVAT facility of any input or input service used in the manufacture of the export product and thus the appellant in the present case had not claimed drawback for the Central Excise and Service Tax portions. Accordingly, the case of the present appellant falls under Note No. (13) of the current Notification No. 110/2011-Cus(NT), which is corresponding to Note No.(15) of Notification No. 68/2011-Cus.(NT) that was involved in case of Raghav Industries Ltd. a perusal of the judgment also shows that Note No.(15) of the Notification determining the all industry rates of drawback has not been considered by the Hon'ble High Court. The appellant's case falls under Note No.(15) of the Notification and accordingly it stood established that the appellant had not availed CENVAT facility. The adjudicating authority had no jurisdiction to deny the appellant's rebate claims on the ground that granting such rebate would result in double benefit because the appellant had claimed drawback at high rate. Neither Rule 18 of the Central Excise Rules, 2002 (CER, 2002) nor Notification No.21/2004-CE (NT) lays down that rebate shall not be admissible if drawback was availed by the manufacturerexporter, especially when there is no dispute that all the conditions under the said Rule and the Notification were fulfilled. The 1st proviso to Rule 3 of Drawback Rules was applicable only when a brand rate of drawback was fixed under Rule 6 or 7 of the Drawback Rules, but not when drawback at all industry rate determined under a Notification issued by the Central Government was claimed by the exporter. The rebate claims have been lodged by the appellant during October-2016 to March-2017 and the Revenue is under obligation to pay interest for the delay in paying the rebate as held by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. - 2011 (273) ELT.3 (SC) and other judgments / decisions.
- 3. Personal hearing in the appeal was held on 12/02/2018, which was attended on behalf of the appellant by Smt. Shilpa P. Dave, Advocate. The learned Advocate submitted that against the order of M/s Raghav Industries they have moved Hon'ble

High Court and requested to keep the matter in call book.

- I have carefully gone through the contents of the impugned order as well as the 4. grounds of appeal filed by the appellant. On considering the request of the learned Advocate for keeping the matter pending in view of the Advocate having Approached Hon'ble High Court in a similar matter in the case of M/s Raghav Industries, the same is not feasible as it does not fall under the categories specified for transfer to call-book in the C.B.E.C. Circular No. 162/73/95-CX dated 14/12/1995, as modified. The appellant has not relied upon any case law to enforce its argument that rebate claims were admissible even when drawback had been availed. On the other hand the adjudicating authority has relied on the judgment of Hon'ble High Court of Madras in the matter of Raghav Industries Ltd. vs Union of India - 2016 (334) ELT 584 (Mad.) where it has been held that there is no entitlement for an exporter to claim both drawback as well as rebate. The reliance placed by the appellant on the said judgment is valid for correctly rejecting the impugned rebate claims as I find that Hon'ble Madras High Court has upheld this ratio in another similar issue in the case of Kadri Mills (CBE) Ltd. vs U.O.I. -2016 (334) ELT 642 (Mad.), as follows:
 - 7. As stated by the learned Standing Counsel appearing for the respondents, the issue involved in the present Writ Petition is covered by the decision made in W.P. No. 1226 of 2016 [2016 (334) E.L.T. 584 (Mad.)]. When the petitioner had availed the duty drawbacks on Customs, Central Excise and Service Tax on the exported goods, they are not entitled for rebate under the Central Excise rules by way of cash payment as it would result in double benefit.

Following the ratio of the judgments cited supra, I reject the appeals filed by appellant.

5. तीनो अपीलोंका निपटारा उपरोक्त तरीकेसे किया जाता हैं।
All the three appeals stand disposed of in the above terms.

317/21/1

(उमा शंकर) आयुक्त (अपील्स-१)

Date: 22 / 03 / 2018

Attested

(K. P. Jacob) Superintendent (Appeals-I) Central Excise, Ahmedabad.

By R.P.A.D.

To M/s Kikani Exports Pvt. Ltd., Survey No. 774/P, 773, Simej, Dholka, District: Ahmedabad – 382 210.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.

2. The Commissioner of C.G.S.T., Ahmedabad-II.

3. The Additional Commissioner, C.G.S.T. (System), Ahmedabad-II.

4. The Deputy Commissioner, C.G.S.T., Division: V, Ahmedabad.

5. Guard File.

6. P.A.



