

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक 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(39)13 /North/Appeals/ 2017-18
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 398-17-18
 दिनांक (Date): 26-Mar-2018 जारी करने की तारीख (Date of issue): 16/4/2018
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No MP/09/Dem./2017-18 Dated: 26/05/2017
 issued by: Assistant Commissioner Central Excise (Div-V), Ahmedabad North

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

M/s Chetan S. Vora

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:

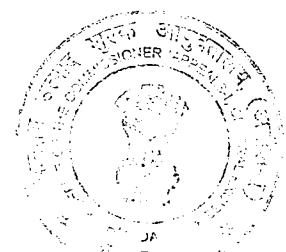
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

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 ।



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 मैन्टल 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 इए-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 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

Mr. Chetan Shantilal Vora [*hereinafter referred to as the 'appellant'*], is the proprietor of M/s. Parshwanath Pipes situated at Shyam Complex, NH8, Khodiyar Nagar Char Rasta, Bapunagar, Ahmedabad. The appellant is engaged in the trading of Plastic pipes of various varieties. The appellant purchases the pipes from open market. The appellant had also purchased such pipes from Mr. Hiralal Pater, Partner of M/s. Maruti Plastics (herein after referred as 'the Supplier') during 2011-12. The goods so purchased were supplied under the challan of M/s. Maruti Marketing. On the basis of information that the Supplier was indulging in evasion of Central Excise duty, the Central Excise officers conducted a search of the factory/office premises of the supplier, which was a Central excise registered firm. Adjacent to the factory of the supplier was another factory, namely M/s. Maruti Polyplast, which was not registered with the Central Excise Department. The appellant was found to be one of the three main buyers of the supplier, which was correlated with the appellant's statement dtd.5.05.2014, recorded under Section 14 of the Central Excise Act, 1944. The supplier wilfully conducted the sale proceeds at their factory gate without raising Invoice and receiving payments in cash. The supplier also failed to make proper accounting of such sales proceeds. Accordingly, a Show Cause Notice was issued to the supplier demanding Central Excise duty amounting to Rs. 5,02,806/-, for the period from 1.04.2011 to 11.02.2012. As one of the buyers, the appellant was also issued a Show cause notice as to why penalty should not be imposed upon them under Rule 26(1) of the Central Excise Rules, 2002. The Adjudicating authority while confirming the demand of Rs.5,02,806/-, against the appellant vide Order-In-Original No. MP/09/Dem/2017-18 dt.26.05.2017 (herein after referred as 'the impugned order'), imposed a personal penalty of Rs.1,00,000/-, upon the appellant. Aggrieved by the impugned order, the appellant has filed this appeal before me.

2. The facts of the case in brief are that on the basis of information that the supplier was indulging in evasion of Central Excise duty, a search of the supplier's factory/office was conducted on 23.02.2012. The supplier was engaged in the manufacture of PVC Suction Pipes, Braided Hose Pipes, Garden Pipes, etc.. Towards the right side of the supplier's factory was another factory premises namely M/s. Maruti Polyplast, who were engaged in the manufacture of Rigid Pipes, Kisan Pipes, HDPE Pipes falling under

Chapter Sub-heading No. 39172190 of the Central Excise Tariff Act, 1985. During the search proceedings, Shri Hiralal Patel, Partner in both, the supplier unit and M/s. Maruti Polyplast, informed that they had cleared certain goods without issuing invoices and without payment of Central Excise duty. Inquiry was extended in this case, to some buyers whose names and addresses were provided by the supplier. The statement of the appellant was also recorded under Section 14 of the Central Excise Act, 1944, wherein the appellant admitted that they do not have any purchase bills for the year 2011-12 in respect of the purchases made from M/s. Maruti Polyplast and the supplier. The appellant also agreed in his statement that M/s. Maruti Polyplast and the supplier had sold the goods to him during 2011-12 without raising any tax invoices and for such purchases, he had made the payments in cash only without receiving any bill for such purchases. Based on the above statement, it appeared that the appellant had rendered himself liable for penalty under the provisions of Rule 26(1) of the Central Excise Rules, 2002, in as much as they acquired possession of and were concerned in transporting, removing, depositing, keeping, concealing, selling and purchasing or in any other manner dealing with excisable goods, which they knew and had reasons to believe were liable to confiscation under Central Excise Act, 1944, and the rules framed there under. Therefore, a Show Cause Notice on the above grounds, seeking to impose penalty under Rule 26(1) of the Central Excise Rules, 2002, was issued to the appellant. The Adjudicating Authority informed in the impugned order that the appellant had agreed to pay the penalty as imposed. The Adjudicating Authority vide the impugned order concluded that Central Excise duty amounting to Rs.5,02,806/-, was payable by the supplier, alongwith interest and also imposed penalty of Rs.5,02,806/-, as they committed the act with an intent to evade payment of Central Excise duty. He also found that the appellant and two other similar buyers, had acquired possession and were concerned in dealing and purchasing excisable goods, which they knew and had reasons to believe were liable to confiscation under the Central Excise Act, 1944, and the Rules thereunder, and as such imposed a penalty of Rs.35,000/-, upon one buyer, Shri Rajendrabhai Shantilal Shah of M/s. Laxmi Traders, Rs.10,000/-, upon another buyer, Shri Mayur Bhupendrabhai Mehta of M/s. Mayur Agency, and Rs.1,00,000/-, upon the appellant of M/s. Parshvnath Pipes.

3. Aggrieved by the impugned order dt.26.05.2017, the appellant has filed this appeal on the grounds that (i) the impugned order imposing



penalty on the appellant is without any material evidence on record; (ii) there is no fact brought on record about the role played by the appellant in the alleged offence; (iii) there is no evidence which even remotely suggests that the appellant had dealt with the goods knowing or had reasons to believe the same were liable to confiscation; (iv) the entire action of the adjudicating authority was based on the statement of the supplier and no other corroborative evidence has been brought on record; and (v) it was obligatory on the part of the adjudicating authority to first determine the total duty evaded by the supplier on the goods sold to the appellant, before determining the penalty so that the penalty imposed on the appellant could not be more than the amount of duty payable.

4. During the personal hearing, Shri N.K. Tiwari, Consultant, authorised by the appellant, appeared before me and reiterated the grounds of appeal. He also requested for reduction in penalty because the value of offending goods was Rs.1 lakh.

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and submissions made by the appellant.

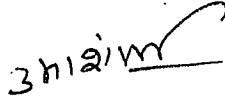
6. At first, I observe that there are three buyers who were inquired during the investigation and the adjudicating authority found all the three had acquired possession and were concerned in dealing and purchasing excisable goods, which they knew and had reasons to believe were liable to confiscation under the Central Excise Act, 1944, and the Rules there under, and as such imposed a penalty of Rs.35,000/-, upon one buyer, Shri Rajendrabhai Shantilal Shah of M/s. Laxmi Traders, Rs.10,000/-, upon another buyer, Shri Mayur Bhupendrabhai Mehta of M/s. Mayur Agency, and Rs.1,00,000/-, upon the appellant of M/s. Parshvnath Pipes. The Adjudicating Authority has nowhere in the order elaborated on the extent of the role of the buyers or discussed any difference in the role of the three buyers. Neither has the role of the three buyers differentiated in the Show Cause Notice issued in this case. As such, the difference of penalty between the three buyers, which is exorbitantly high, does not seem to be justifiable. Whereas, Shri Rajendrabhai Shantilal Shah of M/s. Laxmi Traders, one of the buyers was imposed a penalty of Rs.10,000/- only, the appellant was imposed a heavy penalty of Rs.1,00,000/-, without any factual

*justification in the impugned order. I, therefore, reduce the penalty on the appellant in this case to Rs.10,000/-.

7. I, therefore, modify the impugned order dt.26.05.2017, to the above extent and allow the appeal partially.

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

8. The appeal filed by the appellant, stands disposed off on above terms.


(उमा शंकर)
आयुक्त (अपील्स)

ATTESTED


(R.R. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS, AHMEDABAD.

To,

Shri Chetanbhai Shantilal Vora,
Proprietor of M/s. Parshvnath Pipes,
17, Shyam Complex,
NH-8, Khodiyar Nagar Char Rasta,
Bapunagar,
Ahmedabad-380024.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Division-VII, CGST, Commissionerate-Ahmedabad(North).
- 4) The Asst. Commissioner(System), CGST, Hqrs., Ahmedabad(North).
- 5) Guard File.
- 6) P.A. File.



