

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

रजिस्टर डाक ए .डी .द्वारा

2917 to 2921

क फाइल संख्या (File No.): V2(33)93 /North/Appeals/ 2017-18  
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 419-17-18**  
 दिनांक (Date): **3/28/2018** जारी करने की तारीख (Date of issue): **9/5/2018**  
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No **4445/REBATE/2017** Dated: **15/12/2017**  
 issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad North

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

**M/s Surya International**

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 ।



- (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 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 वहाँ 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 वहाँ 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 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।

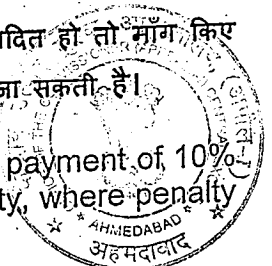
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



**ORDER IN APPEAL**

The subject appeal is filed by M/s. Surya International, 444/P, Village Changodar, Taluka-Sanand, Dist- Ahmedabad (hereinafter referred to as 'the appellant') against the Order in Original No.4445/rebate/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST Central Excise, Division-IV, Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. The facts in brief of the case is, The appellant had filed a rebate claim of Rs. 292471/- for duty paid on the exported goods, along with requisite documents. however, they have failed to submit the original copy of ARE1 in support of their rebate claim, which is a mandatory requirement as per Rule 18 of Central Excise Rules, 2002 read with Notification No-19/2004-C.E. (N.T.) dated 06,09.2004. Show Cause Notice was issued. Vide above Order rejected the refund claim.

3. Being aggrieved by the impugned order, the appellant has filed present appeal on the following main grounds:

- i. that their Commercial Executive, had lost the Original Copy (White) of the ARE-1 and that rebate claim of duty paid on exported goods cannot be rejected on this ground, When the export & payment of duty is not questioned, they submitted copy of Affidavit dated 21.11.2017 and certificate from the changodar Police station, on the basis of the FIR filed by the their Commercial Executive.
- ii. That it's a procedural lapse as the document is misplaced, and requested to condone the Original Copy and grant the rebate claim on the duplicate copy which was certified by the Customs Officer evidencing the export.

4. Personal hearing was granted on 21-3-18. Shri R.R.Dave, Consultant attended on behalf of the appellant. He requested to consider the submission made in their grounds of appeal .citation of UM Cable Ltd.

5. I have carefully gone through all case records placed before me in the form of Show Cause Notice, the impugned order and written submissions made in GOA. I find that, the rebate of excise duties relate to export are covered under Rule 18 of Central excise Rules, 2002 read with Notification No.19/2004-Customs (N.T.) dated 06.09.2004 and wherein procedure and relevant documents required for the rebate claim have been described.

6. I find that, the rebate claim filed by the appellant with the adjudicating authority is treated as incomplete as the concerned ARE-1 original Copy not filed by them along with the rebate claim. As the appellant failed to submit the relevant ORIGINAL ARE-1, the said rebate claim is rejected. Further in absence of filing of ARE-1, he is not found as followed the procedures and conditions as specified in the Notification No.19/2004-CE (NT) dated 6.9.2004, issued under Rule 18 of the Central Excise Rules, 2002.

*[Handwritten signature]*



7. Further, on grounds of non submission of documents, I find that, the appellant have submitted relevant documents as required by the rebate sanctioning authority. I find that, they have lost the Original Copy (White) of the ARE-1, and they have submitted copy of Affidavit dated 21.11.2017 and certificate from the changodar Police station, on the basis of the FIR filed by their Commercial Executive. I also find they have filed their statutory auditor's certificate certifying the details of duty payment particulars as well as Xerox copies of RG1 register along with ARE-1 and copy of invoices. I find from the O-I-O that duty payment particulars and export has not been doubted, and stand established. That rebate claim of duty paid on exported goods cannot be rejected on this ground, when the export & payment of duty is not disputed.

In view of this, I find that, this omission being procedural lapse, as the document is misplaced and FIR filed. They have also submitted duplicate copy which was certified by the Customs Officer evidencing the export. Therefore, rebate claim cannot be denied. I rely on the case laws of 1. UM Cable Ltd. reported at 2013(293) ELT 641(Bom), it is held by Hon'ble High Court that;

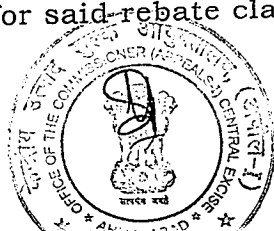
*Rebate - Claim of - Non-production of original and duplicate copy of ARE-1 - Ipso facto, it cannot invalidate rebate claim - In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying requirements of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) - On facts, claim directed to be considered on basis of bills of lading, banker's certificate of inward remittance of export proceeds and certification by Customs authorities on triplicate copy of ARE-1. [paras 16, 17]*

*Rebate - Procedure - Notification No. 19/2004-C.E. (N.T.) and C.B.E. & C. Manual of Supplementary Instructions of 2005 only facilitate processing of rebate application and enables authority to be satisfied that requirement of goods having been exported and being of duty paid character - It cannot be raised to level of mandatory requirement - Rule 18 of Central Excise Rules, 2002 itself makes distinction between conditions/limitations and procedure for grant of rebate - Former are mandatory and latter directory. [para 12]*

2. Garg Tex-O-Feb Pvt. Ltd. -2011(271) ELT. 449 (GOI), it is held by the Revisionary Authority (Department of Revenue) that;

*Rebate - Exports, proof of - Documents (ARE-1) lost and applicant could not produce original documents - Claim rejected by lower authorities - Applicant could have reconstructed the documents - Instead of rejecting the rebate claims for non-submission of original documents, the original authority should have considered collateral evidence to verify whether duty paid goods have actually been exported or not as per provisions of C.B.E. & C.'s Central Excise Manual of Supplementary Instructions - Impugned order set aside - Matter remanded to original Adjudicating Authority to decide the case afresh - Rule 18 of Central Excise Rules, 2002. [paras 7, 8, 9]*

Accordingly, I hold that the appellant is eligible for said rebate claim.



8. In view of the foregoing discussion and findings, I set aside the impugned order and allow the appeal of the appellant.

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

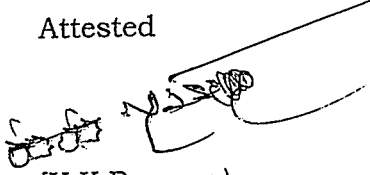
The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स )

Attested



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

Date- /3/18

By Regd. Post A. D

M/s. Surya International,  
444/P, Village -Changodar,  
Taluka-Sanand,  
Dist- Ahmedabad.

Copy to :

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

