



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय उत्पाद शुल्क भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(32)28 /Ahd-II/Appeals-II/ 2016-17 /1028 to 1032  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 78-17-18

दिनांक (Date): 29.08.2017 जारी करने की तारीख (Date of issue): \_\_\_\_\_

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

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. \_19/AC/D/2015/UKG\_ Dated: 21/03/2016 issued  
by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II

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

M/s Esdee Paints 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:

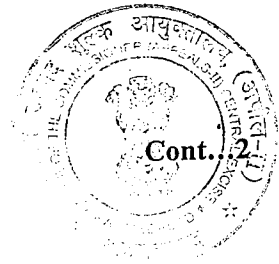
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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।



- (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 हों।

- (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 :-

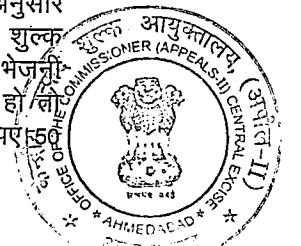
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल 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 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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**

This is an appeal filed by M/s Esdee Paints Ltd. (herein after referred to as the appellants) against the OIO No. 19/AC/D/2015/UKG dtd. 21.03.2016 (herein after referred to as the impugned order) passed by the Assistant Commissioner.

2. The brief facts of the case are that the appellants availed credit of Rs. 1,14,227/- of Service Tax paid for renting of godown warehousing charges. The owner of the godown is also Director of the company i.e. the appellants and is related to the company. It was found that the services utilized beyond the stage of manufacturing and clearance of the goods from the factory cannot be treated as input services. Therefore the same was required to be recovered.

The Assistant Commissioner, vide the impugned order confirmed demand of Rs. 1,14,227/- and imposed penalty of equal amount as per provisions of Section 11A (5) of the Central Excise Act, 1944 (herein after referred to as the said Act) read with Rule 14 of the Cenvat Credit Rules, 2004 (herein after referred to as the CCR, 2004) and under Rule 15 (2) of the CCR, 2004 read with Section 11AC of the said Act respectively.

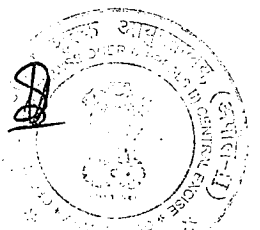
3. Being aggrieved by confirmation of demand of Rs. 1,14,227/- and imposition of penalty of equal amount, the appellants have filed this appeal on the following grounds:

- (a) The appellants are having a depot by taking a godown by paying rent as well as service tax on the said rent amount and the appellants are clearing the goods to such depots on stock transfer basis;
- (b) That the ownership and the risk of the goods were with the appellants till the sale of the goods from such godown;
- (c) That they place reliance on Circular No. 988/12/2014-CX dtd. 20.10.2014 in which it has been clarified that the place of removal is the godown/depot;
- (d) That the restricted scope of definition to Section 4 (3) has been taken by the adjudicating authority;
- (e) That prior to 11.07.2014, the meaning of place of removal was not defined under Cenvat Credit Rules and therefore the interpretation of the said words can be adopted from Section 4 (3) as per which the place of removal means among other things, a depot from where the excisable goods are to be sold after their clearance from the factory. The CBEC has also clarified the said meaning by amending the similar definition in Rule 2 (qa) w.e.f. 11.07.2014;
- (f) That since it was a dispute regarding the interpretation of the word used in the rules and when the appellants have taken the credit on the basis of CBEC Circular dtd. 23.08.2007 wherein it has been clarified that for the purpose of cenvat credit rules, the place of removal is the place of transfer of property of goods from seller to buyer, it cannot be said that there was any fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the acts or rules with an intent to evade payment of duty;
- (g) That in view of above, imposing equivalent penalty is not correct.

4. The personal hearing in the case was held on 19.07.2017 in which Shri Vijay B. Joshi, Advocate appeared on behalf of the appellants. He reiterated the grounds of appeal and submitted decisions of Menon Pistons Ltd. Vs. Commissioner of Central Excise, Kolhapur – 2015 (40) S.T.R. 283 (Tri.-Mumbai) and OIO No. 32-33/ADC/2016/RMG dtd. 01.12.2016.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the depot can be considered as place of removal.



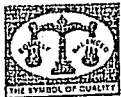
7. I find that the Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 has been issued for defining the place of removal. As per this notification, In the CCR, 2004, in rule 2, clause (qa) reads as follows-

'(qa) "place of removal" means-

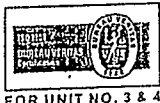
- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;' (emphasis supplied)

I find from the above that the place of removal has been very clearly defined to include, among other things, a depot only incase when either the goods are cleared without payment of duty (ii above) or goods are sold from the depot (iii above) but when the goods are sold from the factory then the gate of factory will be the place of removal. In the instant case, it is very clear from the submission made by the appellants in their letter dated 08.02.2016 (copy of the letter given herein below) very clearly states that the godowns have been kept on rent for storage of their finished goods for further distribution to their regional dealers or customers whereas as per the definition, a depot is only considered a place of removal from where the excisable goods are to be sold. In view of this, I find that the contention made by the appellant is not acceptable.

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Members of-federation of association of small industries of India and Indian paint & allied industries association.



### **ESDEE PAINTS LIMITED**

manufacturers & exporters of nitrocellulose Lacquers, synthetic enamels silk screen inks and other industries finishes.

Plot No. 103 to 108 & 153 to 158,  
158, Mahagujarat Industrial  
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Ph : 02717-250168  
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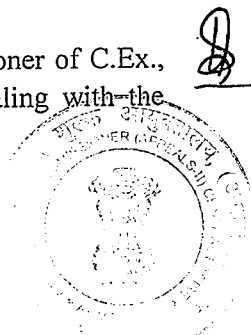
reading of the provisions of the above definition credit of service tax during the period from Dec.-2012 to Nov.-2013 and for the month of Dec.-2013 total amounting to Rs.1,14,227/- is denied and demanded under Sec. 11A(5) of CEA read with Rule 14 of CCRs, 2004, alongwith interest and penalty, invoking longer period of limitation.  
We deny any liability under the show cause notice and submit as under:

4. We invite your kind attention to the fact that we are manufacturing paints and thinners falling under chapter-32 and 38 of CETA, 1985. We are also having depots at various places by taking the godowns on rent to keep our finished goods for smoothly distribution to the regional dealers or customers.

8. I also find that when the goods are cleared under MRP based assessment under Section 4A of the said Act, the definition of place of removal changes as the definition of "place of removal" in Section 4 (3) (c) of the said Act makes it very clear from the opening words of the sub-section that the definition is for the purpose of that sub-section only. In the instant case, I find that the goods are cleared under Section 4A of the said Act, the definition provided in Section 4 (3) (c) of the said Act will not be applicable.

9. I find support from the case of Kohinoor Biscuit Products vs. Commissioner of C.Ex., Noida - 2015 (37) S.T.R. 567 (Tri. - Del.) in which it has been held that when the assessable value of goods was being determined not under Section 4 but under Section 4A of the said Act, the definition of "place of removal" as given in Section 4 (3) (c) of the said Act cannot be adopted for the purpose of CCR, 2004 and accordingly it is the factory gate which would be the place of removal.

10. I also find support from the case of Ultratech Cement Ltd. vs. Commissioner of C.Ex., Raipur - 2014 (35) S.T.R. 751 (Tri. - Del.) in which the Tribunal, while dealing with the



clarification given in the CBEC Circular No. 137/3/2006-CX-4 dtd. 02.02.2006 about definition of place of removal, held as under:

*“ this clarification was against provisions of law- adoption was only in cases where rate of duty on finished goods was chargeable at ad valorem rate on value determined under Section 4 ibid and in other cases 'place of removal' was factory gate.*

*Cenvat credit – inputs – 'place of removal' in Rule 2 (1) of Cenvat Credit Rules, 2004. With Rule 2(t) ibid stipulating that “words and expression used in these Rules and not defined, but defined in the Central Excise Act or the Finance Act shall have meanings respectively assigned to them in these Acts” –However, Section 4 (3) of Central Excise Act, 1944 defining 'place of removal' in its opening words stipulation that it was “for the purpose of this section” – held: it was case of legislation by reference and not by incorporation, as Rule 2(t) ibid referred to “Excise Act” or “Finance Act” without specifying any Excise Act or Finance Act- it would have been a case of legislation by incorporation if Rule 2(t) ibid had stipulated that 'place of removal' had same definition as in Section 4 (3) (c) ibid – Hence, this definition when adopted in Cenvat Credit Rules, 2004 has to be determined, keeping in view other provisions of Section 4 ibid from which it is clear that it was applicable only when rate of duty chargeable on excisable goods was with reference to their ad valorem rate determined under Section 4 ibid – In case of tariff value fixed by Government or goods notified for valuation on MRP basis under Section 4A ibid, natural meaning of this expression has to be given viz. place of removal from which duty on the goods is liable to be paid i.e. factory gate or Bonded Warehouse.”*

11. As regards the appellants' contentions about limitation issue and imposition of penalty, I find that the adjudicating authority has given detailed findings and I find no reason to interfere.

12. In view of the above position I find no reason to interfere with the impugned order and reject the appeal.

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

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

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद.

Date: : .2017

ATTESTED

*[Signature]*

(D:UPADHYAYA)  
SUPERINTENDENT (APPEALS),  
CENTRAL GST, AHMEDABAD.

**BY R.P.A.D.**

M/s. Esdee Paints Ltd.,  
Plot No. 106, 107,  
Mahagujarat Industrial Estate,  
Sarjgej-Bavla Highway,  
Sanand  
Ahmedabad-382213

**Copy To:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-VII, Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- (5) Guard File.
- (6) P.A. File.

