



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.) : V2(29)71 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-112-18-19

दिनांक (Date): 12-Nov-18 जारी करने की तारीख (Date of issue): 6/12/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

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

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No AC/05/Div-II/2017-18 Dated: 28/03/2018 issued by:

Assistant Commissioner-Central GST, (Div-II), Ahmedabad North

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

M/s Laxmi Dye Chem

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 हैं एवं सेवाकर (अपील) अहमदाबाद



Cont...2

(D) In case of rebate of duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(म) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का 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 पढ़ी कार्य से बचने के लिए यथारिथति 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 यथारिथति 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।

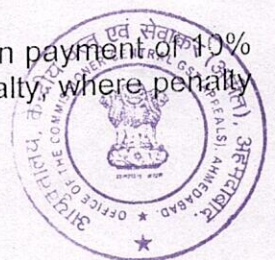
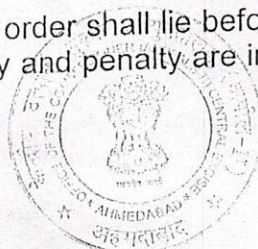
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This appeal has been filed by M/s Laxmi Dye Chem, 303/A, Ganesh Plaza, Opp. Navrangpura Bus Stand, Navrangpura, Ahmedabad (herein after referred to as the appellant) against OIO No. AC/05/Div-II/2017-18 dated 28.3.2018 (herein after referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division-II, Ahmedabad-South (herein after referred to as the adjudicating authority).

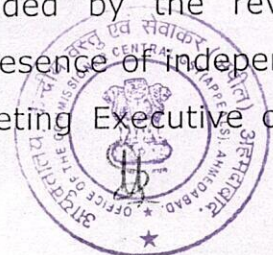
2. The facts briefly are that the officers of Directorate of Central Excise intelligence, Ahmedabad booked a case against the appellant and M/s Harshlaxmi Chemislov, Ahmedabad (for brevity "M/s HC"). Investigations revealed that both the parties had passed on CENVAT credit on inputs based on invoices without actually sending the inputs. These registered dealers had shown purchases of imported material and selling the said chemicals without bill to different buyers based at various places such as Delhi, Uttar Pradesh and Haryana etc. And passing on the cenvat credit to different manufacturers/dealers based at Vapi, Ankleshwar & Ahmedabad. A show cause notice dated 03.09.2015 was issued to, among others, the appellant, proposing penalty under Rule 26 (2) of the CENVAT Credit Rules, 2002. The said show cause notice dtd. 03.09.2015 was adjudicated vide the impugned order wherein the adjudicating authority imposed the penalty of Rs. 3,30,000/- on the appellant.

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

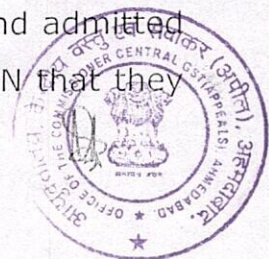
- a) That the appellant is registered with Central Excise department and are regularly filing their returns and maintain their register for purchase and sale of the products;
- b) That the impugned order has been passed without any justification based only on confessional statements;
- c) That the impugned authority ought to have proved clearance of goods without any supportive documents by verifying the stock position at appellant's premises;
- d) That the dealers were registered and the department could not find an iota of any evidence for removal of any goods from their end to any buyers without any supportive documents and invoices;
- e) That they have received payments via cheques for total invoice value;
- f) That they being dealers, cannot use/utilize cenvat credit so they have to supply the goods along with whatever the Cenvat credit proportionately attributable to it;



- g) That they request to verify from M/s Vardhman Chemicals whether they have produced finished goods without receipt of raw material;
- h) That any details available from any private note book cannot be taken as an evidence to even suggest that they are involved in any fraudulent transactions unless corroborated by other evidences and the officers have only presumed that the letter 'E' and 'M' mentioned in the note book have some meanings;
- i) That they seek to rely on the judgements of Anita Silk Mills vs. CCE, Vadodara- 2003 (159) ELT-1169 and in A.K. Hanbeen Mohamed vs. CCE- 2000 (125) ELT-173;
- j) That the officers have not proved that the payments received by the appellant under cheque is paid back to the concerned persons and they rely in the case of CCE vs. Sangamitra Cotton Mills Pvt. Ltd. reported in 2004 (163) ELT-472;
- k) That they were not explained any consequences regarding signing of these statements prepared by the officers and they were also threatened to stop the business by taking action against them in case they did not sign;
- l) That the impugned show cause notice proposed for imposition of penalty under Rule 26 (1) of the Central Excise Rules, 2002 whereas the penalty has been imposed under Rule 26 (2) of the Central Excise Rules, 2002 which means that the impugned order has travelled beyond the impugned show cause notice;
4. Personal hearing in the matter was held on 23.08.2018. Shri Purvin L. Shah, Authorised representative appeared on behalf of the appellant and reiterated the grounds of appeals.
5. I have gone through the facts of the case, the grounds mentioned in the appeal and the oral averments, raised during the course of personal hearing. The issue to be decided is whether the imposition of penalty on the appellant is correct or not. The primary issue involved in the case is that the appellant has facilitated availment of CENVAT credit on invoices without sending inputs to the recipients. Appellant-1 has vehemently denied the charges and has stated that they had received the goods, which were accounted for in their RG 23A part-I register and that they being dealers, the inputs could not have been utilized by them and could only be sold for further manufacture of final excisable goods.
6. I find that the business premises were raided by the revenue authorities on 10.09.2014 under panchnama in the presence of independent panchas and Shri Lalit C. Shah, Manager cum Marketing Executive of the



appellant. Similar searches were conducted at the premises of M/s Harshlaxmi Chemicals (for brevity 'HLC') and some diaries were recovered from the premises of HLC. In one of the notebooks recovered from the premises of HLC, it was found that the appellant had made entries regarding sale of goods with certain alphabets used against the entries. There is no dispute about the meaning of the alphabet as explained by the authorised persons of HCL. The authorised persons have clearly confessed in their statements dtd. 16.02.2015 in which while replying the question no. 2 mentioned at page 100 of the SCN, the authorised signatory has admitted that they have not intimated the change of business premises to the central excise authorities and at page 101 of the SCN while replying to question no. 6, he has very categorically stated that the alphabet "E" stands for "only Excise invoice without accompanying corresponding goods". This assertion has again been made at page no. 103 while replying to question No. 7. While replying the question no. 7 mentioned at page 102 of the SCN, the authorised signatory has admitted that the notebook belonged to the appellant and it contained the details of cenvatable invoices issued by the appellant during the financial year 2010-11. The assertions made in the statement dtd. 16.02.2015 by the authorised representative of the HCL have been admitted to be true and accepted by the Manager cum authorised signatory of the appellant in his statement dtd. 17.02.2015 while replying to question no. 8 at page no. 105 of the SCN and the whole modus operandi has been explained while replying to question no. 23 at page 105 of the SCN. I further find that the contents of both the statements dtd. 16.02.2015 and 17.02.2015 have been accepted to be true and admitted by Shri Manoj C. Shah who is the proprietor of the appellant firm in his statement dtd. 17.02.2015. In the SCN, the details of the statement dtd. 11.11.2014 of Shri Birendra Pandey, the supervisor of M/s Vardhman to whom goods had been claimed to have been sold are also there in which he has admitted while replying to question no. 5 at page no. 109 of the SCN that they had merely purchased cenvatable invoices without physically receiving any consignment of input from any of the suppliers during the last five years. He has further informed in his statement that they have not manufactured the final product in which the said input 'phenol' could be used. Shri Sunil Kothari, the proprietor of M/s Vardhman in his statement dtd. 11.11.2014 has accepted and admitted the contents of the statement given by Shri Birendra Pandey, the supervisor of M/s Vardhman. Shri Sunil Kothari, the proprietor of M/s Vardhman in his statement dtd. 11.11.2014 has also accepted and admitted while replying to question no. 16 detailed at page 113 of the SCN that they



have wrongly availed cenvat credit to the tune of Rs. 13,38,729/- on the strength of cenvatable invoices purchased by the appellant and have paid the said wrongly availed cenvat credit as detailed at page 116 of the SCN.

7. While going through all the contents of the statements detailed above, I find that none has been retracted and there is no allegation that the statements were not voluntary. There are diaries and notebook and also the fact that the proprietor of the buyer firm submitting that they have not manufactured the final goods in which the said inputs could be used. These are irrefutable and fully reliable evidences to conclude that the appellant facilitated wrong availment of cenvat credit by merely sending invoices and the goods did not accompany the invoices. The appellants have neither put forward any documentary evidence nor have refuted the contents of the statements to counter the charges. I find support from the Hon'ble Supreme Court's decision in the case of M/s Kelvert Food in which the apex court has held and I quote the relevant part as under:

"18. During the course of arguments learned counsel appearing for the respondent submitted before us that although the aforesaid statements of Managing Director of the Company and other persons were recorded during the course of judicial proceedings but the same were retracted statements, and therefore, they cannot be relied upon. However, the statements were recorded by the Central Excise Officers and they were not police officers. Therefore, such statements made by the Managing Director of the Company and other persons containing all the details about the functioning of the company which could be made only with personal knowledge of the respondents and therefore could not have been obtained through coercion or duress or through dictation. We see no reason why the aforesaid statements made in the circumstances of the case should not be considered, looked into and relied upon.

19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides, the Managing Director of the Company on his own volition deposited the amount of Rs. 11 lakhs towards excise duty and therefore in the facts and circumstance of the present case, the aforesaid statement of the counsel for the respondents cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress."

The apex court has very clearly held that the statements which have been given out of own volition and when there is no allegation of threat, force, coercion etc. can be accepted as evidence. In the instant case also, the circumstances are similar. Accordingly I find that there is no reason to interfere with the impugned order and is therefore upheld as far as it pertains to the appellant and the appeal filed by the appellant is disallowed.



The appellant has sought support from the case law of Anita Silk Mills vs. CCE - 2003 (159) ELT-1169 but that case pertained to Absence of duty paying documents and court held that it only casts some suspicion, but suspicion, howsoever grave, cannot substitute evidence and further no statement were recorded from any processing house therefore I hold that this case is of no use in the instant case.

8. अपीलकर्ता द्वारा दायर की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

उमाशंकर

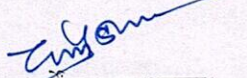
(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित



(क्षमेत्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

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Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad/Rajkot Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-I, A'bad (North),
- (4) The Dy./Astt. Commissioner(Systems),CGST, A'bad (North),
- (5) Guard File,
- (6) P.A.File.

