



सत्यमेव जयते

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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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(84)34 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-115-18-19

दिनांक (Date): 12-Nov-18 जारी करने की तारीख (Date of issue): 11/12/2018

श्री उमा शंकर, आयुक्त (अपील) 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 12/AC/D/BJM/2017 Dated: 31/10/2017

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 Harshit B shah

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



(b) In case of rebate or 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.

(ग) 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 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 (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





शेखारिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक को 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।

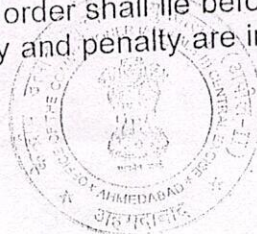
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This appeal been filed by Shri Harshit B Shah, Flat No.2/21, 2<sup>nd</sup> floor, Shantinagar Society, Vejalpu, Ahmedabad (Excise Executive of M/s Doshion Veolia Water Solutions Pvt Ltd, Plot No.36P, 38 to 41,42P,43P, A-A, Mouje Naranpura, Chandrasan, Taluka Sanand, Ahmedabad [hereinafter referred to "appellant"] against Orders-in-Original No.12/AC/D/BJM/2017 dated 31.10.2017 [for short-impugned order] passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad North [for short-adjudicating authority].

2. Briefly stated, the appellant was working as an Excise Excutive of M/s Doshion Veolia Water Solution Pvt Ltd, Chadrasan, Sanand, Ahmedabad [for short-DVWSPL]. A case was booked against DVWSPL, alleging evasion of Central Excise Duty. Accordingly show cause notice V.84/15-111/2015 dated 04.11.2015 was issued to the DVWSPL for [i] recovery of wrongly availed CENVAT credit of Rs.22,83,895/- and [ii] demand of differential Central Excise duty of Rs.1,49,586/- in respect of clearance of waste and scrap with interest and imposition of penalty under the provisions of Rule 15(2) of Cenvat Credit Rules 2004 read with Section 11AC of Central Excise Act, 1944. The said notice also proposes for imposition of penalty to the appellant under Rule 26 of Central Excise Rules, 2002. While confirming the allegations on DVWSPL in the impugned order, the adjudicating authority has also imposed penalty of Rs.3,65,000/- on the appellant.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The impugned order passed by the adjudicating authority is not sustainable primarily on the grounds of natural justice itself as the order has been passed in the name of M/s DVWSPL and without serving to them; that the said order has been passed without even serving the show cause notice and providing opportunity of personal hearing to the appellant to make submissions ; that the impugned order confirming the penalty came to the knowledge of the appellant only when the jurisdictional officers initiated recovery proceedings of the said penalty.
- No effective communications were made by the department for serving the show cause notice or personal hearing letters and impugned order; that he was employed till 24.05.2014 with M/s DVWSPL and was unaware of the impugned show cause notice and the impugned order.
- The penalty was imposed on the basis of confessional statement of Director/authorized signatory of M/s DVSP which is not sustainable as per law.
- The appellant relied on various case laws in support of their above arguments.

4. Personal hearing in the matter was held on 29.08.2018. Shri Parthive H Salot and Shri Arvind Gupta, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further submitted that no show cause notice and order-in-original was issued to him.





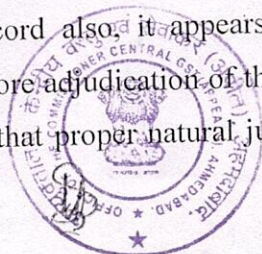
5. A letter dated 24.09.2018, 12.10.2018 and 02.11.2018 was issued by the appellate authority to the jurisdictional Assistant Commissioner to clarify the matter regarding issuance of show cause notice and impugned order as contended by the appellant. Vide letter dated 01.11.2018, the jurisdictional Assistant Commissioner has reported that show cause notice dated 04.11.2015 was issued to M/s DVWSPL, Shri Jagish Gor, G M of the M/s GVWSPL and Shri Harshit B Shah, the appellant. Further, he reported that the impugned order has been pasted at the factory premises of M/s GVWSPL, vide Panchnama dated 08.11.2017, as the said unit was closed.

5. Before going into the merits of the case, I observe that the appellant has applied for condone the delay in filing of appeal under Section 35 of Central Excise Act, 1944 as they have failed to file the instant appeal in the prescribed period of 60 days as mentioned in the CEA. The impugned order was received by them on 24.02.2018 and filed the appeal on 21.05.2018 i.e with a delay of 28 days. As per provisions of Section 35, I condone the said delay taken place in filing of appeal by the appellant.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue involved in the instant appeal is regarding whether the penalty imposed on the appellant, while deciding a case relating to evasion of central excise duty by M/s DVWSPL, is correct or otherwise.

7. On records, I observe that a central excise duty evasion case was booked against M/s DVWSPL by the Central Excise officer. During the course of investigation of the said case, the appellant has informed the investigating authority that he was looking after all the day to day affairs of the work relating to central excise of M/s DVWSPL. As it found that the appellant has actively involved and responsible for wrongly availment of Cenvat credit amounting to Rs.22,83,895/- and evasion of central excise duty amounting to Rs.1,49,586/-, imposition of penalty under Rule 26 of CER was proposed against the appellant vide show cause notice No.V.84/15-111/2015 dated 04.11.2015. Vide impugned order the adjudicating authority has imposed penalty of Rs.3,65,000/- on the appellant.

8. The appellant vehemently contended that the said show cause notice was not served to the appellant by the department at any stage and even the impugned order was received by him only on 24.02.2018; that the said impugned order was passed against him without granting time to represent the case properly by way of defence reply to show cause notice and also by way of personal hearing. The facts on records revealed that the show cause notice in question was issued by the authority to the appellant at the address of factory premises of M/s DVWSPL. No proper acknowledgement showing receipt of show cause notice by the appellant was available with the department. The appellant contended that he left the job of M/s DVWSPL on 24.05.2014. It may be the reason that the show cause notice was not received by the appellant and not properly served to the appellant. On record also, it appears that the appellant has not received the impugned show cause notice before adjudication of the case so as to represent his case properly. In the circumstances, I observe that proper natural justice has not given to the appellant at the





time of serving of impugned show cause notice as well as at the time of adjudication of the case. Therefore, I am of the opinion that the adjudicating authority needs to be heard the appellant properly and for that the case needs to be remanded to the adjudicating authority. Accordingly, I set aside the penalty imposed on the appellant and the matter pertains to the appellant in the impugned order is remanded to the adjudicating authority. The appellant shall file his defence reply to the show cause notice within seven days of receipt of this order and the adjudicating authority shall decide the case, after granting adequate natural justice to the appellant, within two months of receipt of this order.

9. In view of above discussion, I remand the case to the adjudicating authority for the limited purpose for deciding the issue relating to imposition of penalty on the appellant. The appeal stands disposed of accordingly.

*उमा शंकर*  
(उमा शंकर)  
आयुक्त (अपील्स)  
Date : .11.2018



Attested

*मोहान व.व.*  
(Mohan V.V)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D

To  
Shri Harshit B Shah,  
Flat No.2/21, 2<sup>nd</sup> floor,  
Shantinagar Society, Vejalpu, Ahmedabad

Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-North
3. The Deputy/Assistant Commissioner, CGST Dn-III, Ahmedabad North.
4. The Assistant Commissioner, System-Ahmedabad-north.
5. Guard File.
6. P.A. File.