



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)97 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-117-18-19

दिनांक (Date): 20-Nov-18 जारी करने की तारीख (Date of issue): 16/12/2018

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 MP/9-25/Reb/18-19 Dated: 07/05/2018

issued by: Assistant Commissioner-Central Excise (Div-II), Ahmedabad North

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

M/s Madhuraj Industrial Gases (P) 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।



Cont...2

(iii) 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.

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

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

(vi) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट मान्य की गई है, और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त अपील के द्वारा पारित हो समय पर या बाद में वित्त अधिनियम (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

(vii) 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.

(viii) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट पत्र 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.

(ix) 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.

रीमा 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 रीमा 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



आवेदन बैंक ड्राफ्ट के रूप में संबन्ध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक को प्राप्त करा जाये 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 Asslt. 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.

(1) यह इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त रूप से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी 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 not withstanding 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.

(2) 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 प्रिकृत लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the acjournment 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.

(3) इन और सम्बंधित 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.

(4) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (शिरस्टेट), 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 उत्पादन शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) यह 11D के तहत निर्धारित राशि;
- (ii) त्रिगुण 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।

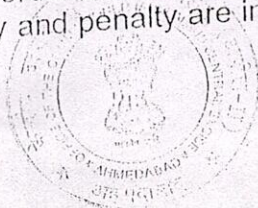
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

यदि अपील के लिए 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 alone is in dispute.



ORDER IN APPEAL

This appeal has been filed by M/s. Madhuraj Industrial Gases (P) Ltd., 641/8, Eranda Hall, Kapasia Bazar, Kalupur, Ahmedabad – 380 002 [for short – ‘appellant’] against OIO No. MP/9-25/Reb/18-19 dated 7.5.2018 [mentioned as OIO No. MP/9-25/Reb/AC/2018/KDB] passed by the Assistant Commissioner, CGST, Division II, Ahmedabad North Commissionerate [for short – ‘adjudicating authority’].

2. The appellant, a merchant exporter, having central excise registration No. AAECM2039EXD001, filed rebate claims for Rs. 78,390/- under Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE (NT) dated 6.9.2004, with the adjudicating authority on 3.4.2017. A show cause notice dated 1.6.2017 was issued to the appellant informing that in respect of two ARE-1s the duty calculation was wrong and there was no endorsement in the pink copy by the concerned Superintendent. Further, with respect to the rest of the ARE-1s, it was informed that the pink copy of the ARE-1s was not enclosed and that duty particulars were not mentioned.

3. Vide the impugned OIO dated 7.5.2018, the adjudicating authority, rejected the rebate claim on the following grounds:

- that though the appellant had submitted pink copies during the course of personal hearing, it was not endorsed by the jurisdictional range office;
- that this was not a lapse - but malafide;
- that in respect of two ARE-1s, two set of pink copies were produced, one with the rebate claim and another during the course of personal hearing;
- that the appellant has not submitted any BRC of the goods having been exported.

4. Feeling aggrieved, the appellant has filed this appeal against the aforementioned impugned OIO dated 7.5.218, wherein he has raised the following grounds:

- that the adjudicating authority failed to appreciate the facts and circumstances;
- that all the goods were cleared to SEZ unit; that the original and duplicate copy of ARE-1 duly signed by the proper officer was submitted to the adjudicating authority; that there is no dispute of the goods having been exported;
- that the rebate claims cannot be denied on the grounds that the triplicate copy of the ARE-1 was not signed by the proper officer;
- that they were not aware of the procedure;
- that the rebate ought to have been allowed after verifying all the documents.

5. Personal hearing in the case was held on 20.10.2018, wherein Shri N.K.Oza, Advocate appeared on behalf of the appellant. He reiterated the grounds of appeal.

6. I have gone through the facts of the case the grounds of appeal and the oral averments raised during the course of personal hearing. The question to be decided is whether the appellant is eligible for rebate or otherwise.

7. Let me put some facts, which stand undisputed. The Range Superintendent vide his letter dated 5.5.2017, has very clearly reported that there was no export intimation given to his office; that the ARE-1s were not submitted to his office; that in respect of the ARE-1s wherein the pink copy [triplicate] was submitted, the duty particulars were not mentioned; for the



rest of the rebate claims, the pink copies were not submitted; that though the pink copies were submitted during the course of personal hearing, these copies were not endorsed by the jurisdictional range officer; that the duty payment has not been verified.

8. I have held in my earlier orders that two primary conditions that need to be verified while granting refund is [a] whether the goods were exported; and [b] that these were duty paid goods. Procedural lapses can be condoned. But the important question is - can the lacunae of not having followed the due procedure, of not having informed the concerned jurisdictional officer about the export, of not submitting the copies of ARE-1s to the said jurisdictional range office and not getting the duty particulars verified, and of completely ignoring the procedure spelt out in notification No. 19/2004-CE dated 6.9.2004 as amended from time to time, be called a procedural lapse. I am afraid, this is not a procedural lapse.

9. Needless to state, since one of the primary condition amongst the various conditions being that the exported goods should have suffered duty, is not satisfied, I find that the adjudicating authority was correct in rejecting the rebate. My findings are supported by the order of the Additional Secretary, Revisionary Authority, Government of India, in the case of M/s. DSM Sinochem Pharmaceuticals India Pvt. Ltd [2018 (15) GSTL. 476 (GOI)], the head notes of which are as follows:

Export rebate - Claim of - Merchant-exporter - Goods not exported directly from factory or warehouse - As per Notification No. 19/2004-C.E. apart from condition requiring export of goods directly from factory or warehouse, duty paid character of goods also needs to be established - In instant case, ARE-1 of principal manufacturer not issued under supervision of jurisdictional Central Excise officers and self-sealing procedure not followed by principal manufacturer or by assessee while exporting goods - Also, goods not physically present and fact that assessee exported goods cleared from factory of principal manufacturer on payment of duty, cannot be verified - Commissioner's findings of identity of exported goods with duty paid goods cleared from factory of principal manufacturer cannot be established on the basis of written submissions alone, not assailable - Rebate of duty not rejected merely on the ground that goods not exported directly from factory of principal manufacturer, but also for assessee's failure to establish identity of goods exported with goods cleared by principal manufacturer on payment of Central Excise duty - Rule 18 of Central Excise Rules, 2002. [paras 2, 4]

10. In view of the foregoing, the impugned OIO dated 7.5.2018 rejecting the rebate is upheld and the appeal filed by the appellant is rejected.

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

(उमा शंकर)

आयुक्त (अपील्स)

Date 20.11.2018

Attested

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.



By RPAD.

To,
M/s. Madhuraj Industrial Gases (P) Ltd.,
641/8, Eranda Hall,
Kapasia Bazar,
Kalupur,
Ahmedabad – 380 002

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division- II, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.