

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(38)105 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-121-18-19

दिनांक (Date): 20-Nov-18 जारी करने की तारीख (Date of issue): 12/11/2018

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/03/DEM/AC/2018/KDB 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 Archem Industries

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए शक्ति 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



(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.

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

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

(d) 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 हो समय पर या बाद में वित्त अधिनियम (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

(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.

(e) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट फार्म संख्या ईए-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 प्रती 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.

(f) 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



आवेदन बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक को भेजा 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 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 रूप से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी 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 not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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 लिपिक 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 और 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 (शिरटेड), 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) 33 D के तहत निर्धारित राशि;
- (ii) त्रुटि 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।

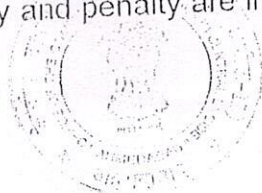
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 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 Archem Industries, B/39 & 50 Arvind Industrial Estate, B/H Anil Starch, Bapunagar, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.MP/03/Dem/AC/2018/KDB dated 27.04.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGST, Division-II, Ahmedabad-South [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that during scrutiny of ER-1 for the period of December 2012 to October 2013, it was observed that the appellant had cleared their finished goods viz Miscellaneous Chemicals falling under Tariff Heading 38099190 without payment of central excise duty by claiming exemption notification No.12/2012 -CE dated 17.03.2012 (Sr.No.133) for clearance of 118400 Kgs of finished goods valued to Rs.63,02,700/-, involving central excise duty of Rs.7,79,014/-. As it appeared that the appellant has availed the said notification wrongly and exemption as provided under the said notification is not applicable to them while clearing the goods, a show cause notice dated 01.01.2018 was issued to them for recovery of the duty short paid with interest; imposition of penalty under Rule 25(1) of Central Excise Rule, 2002 (CER) read with Section 11 AC (1)(b) of Central Excise Act, 1944 and Rule 26 of CER; confiscation of goods cleared under Rule 25 of CER. Vide the impugned order, the adjudicating authority has confirmed the short paid duty with interest and imposed penalty as proposed. However, the adjudicating authority has dropped the proceedings of confiscation of goods as proposed.

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

- The show cause show cause notice is barred by limitation, but the same has not considered some irrelevant grounds.
- They made clearance under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 for procuring the said goods under nil rate of duty vide Sr.No.133 of notification No.12/2012-CE issued by Central Excise office at Amraivati (Maharashtra). On copy of such application of was endorsed and in turn submitted to jurisdictional central excise officer of the appellant. The appellant has also filed ER-1 return, mentioning such clearance in detail.
- Department has already been issued show cause notice for the period of November 2013 onwards and the present show cause notice is of prior to that period and issued in January 2018, therefore, it is time barred.



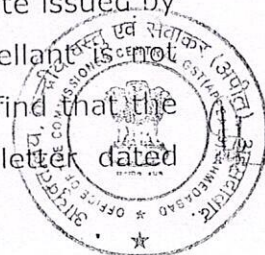
- Further, the show cause notice issued prior to the period of instant case has already been decided at appellate stage also and wherein penalty imposed was set aside.
- The adjudicating authority has not considered the provisions of Central Excise (Removal of Goods at Concessional Rate of duty for Manufacture of Excisable goods) Rules, 2001 and the provisions of the said rules clearly barred the jurisdictional officer of the appellant demanding duty from the appellant.

4. Personal hearing in the matter was held on 25.10.2018. Shri M.H.Ravel, Consultant appeared for the same and reiterated the grounds of appeal. He further submitted additional submissions.

5. 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 moot issue to be decided in the matter as to whether the appellant is eligible for exemption notification No.12/2012-CE dated 17.03.2012 (Sr.No.133) for clearing their final goods falling under chapter heading 38.

6. On perusal of the records, I observe that the issue involved in the instant case is pertaining to the period of December 2012 to October 2013 and the issue involved subsequent to the said periods i.e November 2013 to April 2014 and May 2014 to November 2014 has already been decided by me, vide OIA dated 21.07.2016 and 28.10.2016. Vide the said OIA, the duty demanded by the lower authority has been upheld and set aside the penalty imposed under Rule 25 of Central Excise Rules as there was no suppression of facts in the matter.

7. I observe that in the said case as well as in the instant appeal, the appellant had cleared the goods without payment of duty on the basis of certificate issued by the Assistant Commissioner, Central Excise, Amravati Division (Maharashtra) in respect of manufacturer unit M/s Raymond UCO Denim Pvt Ltd. The said certificate was issued by the Assistant Commissioner under the provisions of Central Excise (Removal Goods at Concessional Rate of Duty for Manufacturer of Excisable Goods) Rules, 2001. The exemption notification No.12/2012-CE *supra* availed by the appellant stipulates that nil rate of duty is applicable when "finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs, printing paste and other products and preparations of any kind used in the same factory for the manufacture of textile and textile articles". When the notification did not stipulate to follow the procedures as laid down in the Central Excise (Removal Goods at Concessional Rate of Duty for Manufacturer of Excisable Goods) Rules, 2001, exemption from payment of duty is eligible to the appellant when such exempted goods were to be used in the same factory. In the circumstances, it is very clear that the certificate issued by the Assistant Commissioner of Central Excise, Amravati to the appellant is not proper as far as exempted goods referred to the notification *supra*. I find that the matter was taken with the said Assistant commissioner and vide letter dated



14.01.2015, the Assistant Commissioner, Amraiwadi has informed that the said certificates was wrongly issued by him and he further requested to take action to safeguard the duty from the appellant. Since the certificates issued by the Assistant Commissioner considered being an invalid document for clearance of excisable goods without payment of duty, the duty is required to be demanded.

7. In the instant case, the appellant has mainly argued that the show cause notice issued for the period involved in the instant case i.e December 2012 to October 2013 is time barred as show cause notice in respect of subsequent periods i.e November 2013 to April 2014 and May 2014 to November 2014 have already been issued and duty thereof has already confirmed; that the Appellate authority has also upheld the duty demanded and however penalty imposed by the Assistant Commissioner was set aside. In the circumstance, the appellant has further argued that there is no suppression involved in the instant case, hence longer period cannot be invoked in the impugned show cause notice. They relied on case laws viz. CC, Mumbai Vs/ Phenoweld Polymers Pvt Ltd [2015 (322) ELT 117-Bom]; Ascent Meditech Ltd V/s CC Vapi [2014 (309) ELT 712-Tri.Akm]; and Nizam Sugar Factory [2006 (197) ELT 465 SC]. They also allege that the lower authority has not followed the judicial discipline.; therefore, the demand of duty as discussed above will sustainable only in case of limitation on issuance of show cause notice sustain.

8. The Hon'ble Supreme Court in the case of Nizam Sugar Factory *supra* held that

"Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

The Hon'ble High Court of Bombay in case of M/s Phenoweld Polymers *supra* held that:

"Once the Revenue was so aware and as found by the Tribunal on facts, then, the extended period could not have been invoked and applied. Any larger controversy and wider question was really not arising in the given facts and circumstances. We also keep that open and particularly as to whether a subsequent show cause notice invoking larger period of limitation can be issued when on the same set of facts and allegations earlier show cause notice was issued. In other words, by alleging suppression can the larger period be invoked and for that purpose a fresh show cause notice can be issued or not is a question which we keep open for decision in an appropriate case. We find that on facts the Tribunal was justified in interfering with the Order-in-Original."

And in case of M/s Ascent Meditech Ltd, the Hon'ble Tribunal, Ahemdabad has held that :

"Once the Revenue was so aware and as found by the Tribunal on facts, then, the extended period could not have been invoked and applied. Any larger controversy and wider question was really not arising in the given facts and circumstances. We



also keep that open and particularly as to whether a subsequent show cause notice invoking larger period of limitation can be issued when on the same set of facts and allegations earlier show cause notice was issued. In other words, by alleging suppression can the larger period be invoked and for that purpose a fresh show cause notice can be issued or not is a question which we keep open for decision in an appropriate case. We find that on facts the Tribunal was justified in interfering with the Order-in-Original."

9. I observe that the decision of Hon'ble Supreme Court and Hon'ble Tribunal *supra* are squarely applicable to the instant Case. In the instant case, I find that the show cause notice pertains to the period of November 2013 to April 2014 and May 2014 to November 2014 have already been adjudicated by the jurisdictional Assistant Commissioner on the basis of letter dated 14.01.2015 issued by the Assistant Commissioner, Aamraivadi Division (Maharashtra) and accordingly he confirmed central excise duty and also imposed penalty. The appellate authority has also uphold the duty demanded and set aside the imposition of penalty as there was no suppression of facts involved in the matter. In the circumstances, obviously, clearance pertains to the period of December 2012 to October 2013 is well within the knowledge of the department, while issuing the show cause notice pertains to the subsequent periods as well as at the time of adjudication. Since the demand pertains to the period of November 2013 to November 2014 have already been decided in view of letter dated 14.01.2015 of Assistant Commissioner, Amraiwadi, issuance of show cause notice invoking larger period of limitation, pertains to the period December 2012 to October 2013 is not sustainable and required to be set aside as such demand is time barred.

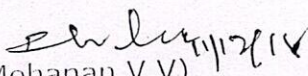
10. Therefore, in view of the foregoing findings and applying the ratio of decisions cited *supra*, I hold that the impugned order is unsustainable to the extent it is challenged before me on limitation and liable to be set aside and is set aside.

11. In view of above, I set aside the impugned order and allow the appeal filed by the appellant. The appeal stand disposed of in above terms.

30/11/2018

(उमा शंकर)
आयुक्त (अपील्स)
Date : .11 .2018

Attested


(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

By RPAD.

To,
M/s Archem Industries,
B/39 & 50 Arvind Industrial Estate,
B/H Anil Starch, Bapunagar, Ahmedabad



Copy to:-

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