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

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
**Central GST, Appeal Commissionerate- Ahmedabad**
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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7618 to 7622

क फाइल संख्या (File No.) : **V2(84)148 /North/Appeals/ 2018-19**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-123-18-19**
दिनांक (Date): **29-Nov-18** जारी करने की तारीख (Date of issue): 12/12/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker , Commissioner (Appeals)**

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **100/AC/18-19/Rebate** Dated: **14/08/2018**
issued by: **Assistant Commissioner**-Central Excise (Div-I), Ahmedabad North,

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

**M/s Aptek Instrumentation Pvt 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 पूवोक्त 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 of duty of 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.

(ब) 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.

(d) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त अपील के द्वारा पारित दो 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.

(ई) 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.

(ई) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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, केंद्रीय 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 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. Registar 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 ओदश 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 हैं।

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.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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) इस 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 in 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 (रिस्टेट), के प्रति अपीलो 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 संदर्भ 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

M/s. Aptek Instrumentation Pvt. Ltd., Plot No. 175/1/1, Phase-I, GIDC, Naroda, Ahmedabad-382330 (*for short - 'appellant)* has filed this appeal against OIO No. 100/AC/18-19/Rebate dated 14.08.2018 passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad (North) (for short - '*adjudicating authority*').

2. Briefly stated, the facts are that the appellant had filed a claim of Rs. 2,18,366/- on 29.05.2018 seeking rebate in respect of goods exported vide ARE 1 No. 28/17-18 dated 31.05.2017 under rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004 and section 11B of the Central Excise Act, 1944.

3. On the appellant's failure to submit original and duplicate copy of ARE-1 duly endorsed by the Customs authorities, triplicate copy of the ARE-1 and evidence of payment of duty, a show cause notice dated 22.06.2018 was issued to the appellant proposing rejection of the rebate claim. The notice was adjudicated vide the impugned OIO dated 14.08.2018 wherein the rebate claim was rejected.

4. Feeling aggrieved, the appellant has filed this appeal raising the following averments:

(a) that the adjudicating authority should have dealt with all the submissions and negated it in case he did not agree with the same;

(b) the adjudicating authority has not disputed the export of goods and payment of duty as the goods were exported from Air Cargo Complex, Ahmedabad and the details of the shipping bill has been mentioned in the Air Way Bill No. AMD/MXP/0225 dtd. 01.06.2017;

(c) that since export of goods and payment of duty is not in dispute, the substantive benefit could not have been denied, for procedural infractions;

(d) that they would like to rely on the case of M/s Cooper Pharma Ltd. – 2013 (289) ELT-213 (GOI), M/s Tricon Enterprises Pvt. Ltd. - 2015 (320) ELT-667 (GOI), Union of India vs. M/s Kamalakshi Finance Corp. Ltd. - 1991 (55) ELT-433 (S.C.);

(e) the supplementary instructions are only to facilitate processing of rebate application and enabling authorities to be satisfied about goods having been exported and about the duty paid nature of the exported goods;

5. Personal hearing in the matter was held on 19.11.2018 in which Shri Jayesh Mehta, Executive (Export) appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions raised during the course of personal hearing.

7. The short question to be decided in this appeal is whether the appellant is eligible for rebate.

8. As is evident, the original adjudicating authority rejected the rebate on the grounds that the claim was filed without original and duplicate copies of customs endorsed ARE-1s; that they had not followed the procedure laid down in chapter 8 of the Central Excise Manual.

9. The procedure prescribed in notification No. 19/2004-CE(NT), dated 6-9-2004 is that goods shall be exported on the application ARE-1, wherein the original and duplicate copies of ARE-1, are handed over to exporter, who will present it before customs. The triplicate copy is sent to the office, wherein rebate claim is to be filed. Customs shall thereafter, examine the consignments and allow export and certify on the application that the goods have been duly exported citing the shipping bill number and date & other particulars of export and return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

10. The documents required to be submitted along with rebate claim includes the original/duplicate copy of ARE-1. The Customs certification on these copies of ARE-1 proves the export of goods. In the absence of original and duplicate ARE-1, rebate sanctioning authority has no chance to compare these documents with triplicate copy of ARE-1 as stipulated in notification No. 19/2004-CE(NT) dated 6-9-2004 and therefore he cannot satisfy himself of the correctness of the rebate claim. Therefore, the adjudicating authority, rejecting the rebate on the grounds of failure to submit original and duplicate ARE-1, duly endorsed by customs is a partially correct argument. In-fact I find that the Joint Secretary(RA), Government of India, in the case of West Coast Pigments [2013(290)ELT135), has upheld rejection of rebate on the grounds of non submission of original/duplicate copy of ARE-1.

11. However, the Hon'ble Bombay High Court in the case of Aarti Industries Limited [2014(305) ELT 196] has relying on the case of M/s. Garg Tex-O-Fab Private Limited[2011(271) ELT 449], held as follows :

> ***9.*** *It is not disputed before us that the goods on which duty has been paid and rebate claimed has in fact been exported. The exporter has to file along with his claim for rebate self-attested export promotion copies of the shipping bill and bill of lading along with original and duplicate copies of the ARE-1. In this case, the petitioner has admittedly filed self-attested copies of shipping bill as well as bill of landing along with the mate receipts for establishing the proof of export. We find in an identical fact situation arising in Garg Tex-O-Fab Pvt. Ltd. (supra) Government of India in revision had held that the assessee therein could claim rebate duty by furnishing collateral document evidencing export of duty paid on goods for the purpose of rebate claim. The aforesaid decision was cited by the petitioner before the Government of India in Revision and the same is recorded in the impugned order at Paragraph 5.4. However, the impugned order does not consider the decision in Garg Tex-O-Fab Pvt. Ltd. (supra) and point out why the same is inapplicable to the facts of the present case. Counsel appearing for the revenue has not been able to point out any distinguishing features in the present case from that existing in the case of Garg Tex-O-Fab Pvt. Ltd. (supra).*

12. I further find support from the case of M/s. UM Cables Limited [2013(293) ELT 641], wherein the Hon'ble High Court of Bombay held as follows [relevant extracts]:

> *"**16.** However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to*

*produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.*

*17. We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.....".*

*[emphasis supplied]*

13. Para 15 of the impugned order clearly records the documents attached with the claims while listing the deficiency and findings that the requirements have been met. Based on the said documents, the adjudicating authority himself states that the goods have been exported. Payment of duty is also not doubted. Thus, both the primary conditions stand satisfied. Having met both the primary conditions and considering the meagre amount involved, I am encouraged to take a broader view on the issue. I find that the appellant has successfully established that the goods were exported on payment of duty. Therefore, it is felt that a substantial benefit should not be withheld on account of a procedural lapse. Hence, I allow the appeal of the appellant with consequential benefits and set aside the original order.

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

14. The appeal filed by the appellant stands disposed of in above terms.

3-11-2019

(उमा शंकर)
केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद
दिनांक:

सत्यापित

(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:
M/s. Aptek Instrumentation Pvt. Ltd.,
Plot No. 175/1/1,
Phase-I, GIDC,
Naroda,
Ahmedabad-382330

**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone.
2. The Commissioner, CGST, Ahmedabad (North).
3. The Dy./Asst. Comm'r, CGST, Division-I, Ahmedabad (North).
4. The Assistant Commissioner, System-Ahmedabad (North)
5. Guard File.
6. P.A. File.