



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.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
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क फाइल संख्या : File No : **V2(38)106/North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-002-APP-159-18-19**

दिनांक Date : **25/01/2019** जारी करने की तारीख Date of Issue:

**श्री उमाशंकर** आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग \_\_\_\_\_ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: **MP/03/DEM/AC/2018/KDB**, Date: **07/05/2018** Issued by:  
**Assistant Commissioner**, CGST, Div: II, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Raymond UCO Denim Pvt. Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए राक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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।

(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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।  
(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 (नं.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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) 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. का 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.

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

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली

भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 यथार्थिती 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 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 यथार्थिती निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।



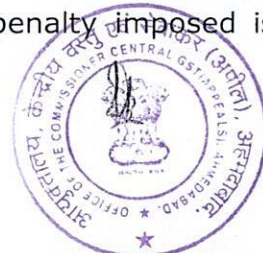
ORDER-IN-APPEAL

This appeal has been filed by M/s Raymond UCO Denim Pvt Ltd, Plot No.C-1, MIDC, Lohara, Yavatmal-445001[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 filed by M/s Archem Industries, B/39 & 50, Arvind Industrial Estate, B/h Anil Starch, Bapunagar, Ahmedabad [for short-M/s Archem], it was observed that they 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 M/s Archem 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 and 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. The said show cause notice also proposes for imposition of penalty under Rule 26 of CER on appellant as it appeared that the appellant had aided and abetted and also facilitated to M/s Archem to remove<sup>e</sup> excisable goods without payment of duty. Vide the impugned order, the adjudicating authority has confirmed the short paid duty with interest and imposed penalty a proposed on M/s Archem. He also imposed a penalty of Rs.10,000/- on appellant

3. Being aggrieved with the impugned order in respect of imposition of penalty, the appellant has filed the instant appeal on the grounds that:

- The department has no jurisdiction to issue show cause notice to the appellant.
- There is no malafide intention on the part of them; that it is prerogative of the competent authority to endorse the certificate in the form of Annexure-45 after getting satisfied; that the said certificates were legally vetted and endorsed by the authority. Therefore, no extended period is invocable. Therefore, the penalty imposed is not correct as per law.



4. Personal hearing in the matter was granted on 19.11.2018. The appellant, vide their letter dated 15.11.2018 has requested to decide the case on the basis of their written submission. Therefore, I take the matter for decision on merit.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum.

6. In the impugned order, I find that M/s Archem 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 i.e the appellant. 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 M/s Archem 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 M/s Archem 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, Amravadi to M/s Archem 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, Amravadi 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. I find that the appeal filed by M/s Archem against the impugned order was decided by me vide OIA No.AHM-EXCUS-002-APP-121-18-19 dated 20.11.2018. In the said OIA, the issue was decided in favour of M/s Archem by holding the impugned order as unsustainable to the extent it is challenged on limitation and was set aside. Since the impugned order, confirming demand and penalty imposed against main party i.e M/s Archem has already been set aside, the charges leveled against the co-noticee i.e the appellant in the instant case will automatically become unsustainable. Accordingly, I do not find any merit in respect of penalty imposed on appellant by the adjudicating authority, vide impugned order. Therefore, I set aside the same.



8. In view of above, I allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

3/11/19

(उमा शंकर)  
प्रधान आयुक्त (अपील्स)  
Date : .1 .2019

Attested

*Mohan V.V.*  
(Mohan V.V.)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.



By RPAD.

To,  
M/s Raymond UCO Denim Pvt Ltd,  
Plot No.C-1, MIDC, Lohara, Yavatmal-445001

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.



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