



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(84)207 /North/Appeals/ 2018-19 / 10423 to 10427
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-232-18-19
दिनांक (Date): 29/03/2019 जारी करने की तारीख (Date of issue): 8/5/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II(AR-IV)), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No AR-IV/01/Supdt/2016-17 Dated: 27/12/2018
issued by: Supdt Commissioner-Central Excise (Div-II(AR-IV)), Ahmedabad North,

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

M/s J K Engineering Co.

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 प्रक्रिया 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 इयूटी क्रेडीट 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।

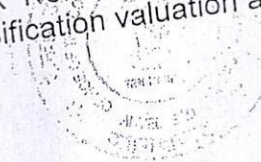
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. 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



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

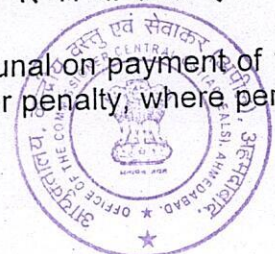
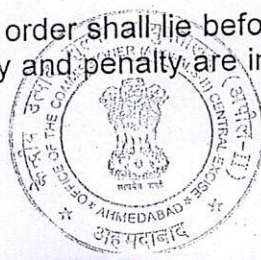
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 has been filed by M/s. J.K Engineering Co., 3-A, Mahashakti Industrial Estate, Nr. Ajay Estate, Opp. Yamuna Estate, B/h Sonya Ceramic, Naroda Road, Ahmedabad – 380025 for short –‘appellant’] against OIO No. AR-IV/01/Supdt/2016-17 dated 27.12.2018, passed by the Superintendent, AR-IV, Division – II, Ahmedabad – North Commissionerate [for short –‘adjudicating authority’].

2. Briefly stated, the facts to the present appeal is that the during the course of scrutiny it was found that appellant was clearing goods viz. ‘submersible pump sets’, ‘submersible pumps sets (BIS)’ & ‘submersible stator rotor parts (BIS)’. The appellant was paying duty for the ‘submersible pump sets’ but was availing exemption under Notification No. 08/2003 CE dated 01.03.2003[for short – ‘exemption notification] on the remaining two products. The department contended that the appellant had not fulfilled the condition mentioned in the Para 2(i) of the exemption notification as they have simultaneously paid the duty on some clearances and availed the exemption benefit for others. A show cause notice was issued to the appellant demanding the duty on those clearances too on which exemption notification was availed, alongwith interest and penalty. The notice was adjudicated vide above mentioned OIO, confirming the demand alongwith interest and penalty.

3. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:

- The present appeal involves both taxability and valuation; and as per the Circular No. 1049/37/2016-CX dated 29.09.2016, Superintendent is not empowered to adjudicate such cases;
- The Standard submersible pumps conforming to BIS standards are specified goods mentioned in the exemption notification and clearances of submersible pumps not conforming to BIS standards(on which the appellant paid full duty) are totally different and the departments allegation of simultaneous clearances is not correct;
- The appellant availed exemption benefit on the specified goods mentioned in the notification No. 08/2006-C.E dated 01.03.2006 and they had not crossed the exemption limit of Rs. 1.5 crore even by clubbing of BIS or non-BIS PD pumps;
- The appellant had given option that they would be availing exemption benefit under notification No. 08/2003-CE on the clearances of Standard Submersible Pumps confirming as amended;
- The show cause notice didn’t discussed the provision of Para 3 of the basic notification, so the findings in the para 11.7 & 11.8 of the impugned order is not sustainable, for this the appellant relied on the judgement in the case of M/s Bayer ABS Ltd. [2003(162) ELT 0970 (Tri-Mumbai)];
- The appellant placed reliance on the judgement in the case of M/s Super Pumps Pvt. Ltd [2016 (341) ELT 345, wherein it is held that exemption notification benefit is not applicable to non BIS submersible pumps and turnover of the same not be considered for arriving at threshold limit; and
- The appellant had made similar clearances in past periods also and declared everything in the ER-3 periodical returns and the department had scrutinized them without raising any objection so penalty is not imposable under Rule 25 of the Central Excise Rules, 2002. The appellant relied on the judgement in the case of M/s Hindustan Steel Ltd [1978(2) ELT(159) SC].

4. A personal hearing was conducted on 27.03.2019 in which the learned CA Kiran Tahelani and CA Gunjan Shah appeared on the behalf of the appellant. The Learned CA reiterated the grounds of appeal and submitted following points:



- As per Circular No. 1049/37/2016, Superintendent cannot decide the matter pertaining to taxability, valuation etc.
- In the judgement in the case of M/s Super Pumps 2016(341)ELT345 BIS and non BIS pumps are treated separately; and
- If BIS and non BIS are not also treated separately the combined clearance does not exceed Rs. 1.5 crores.

5. I have carefully gone through the facts of the case, the grounds of appeal and the submission made by the learned CA at the time of personal hearing. I find the first and the foremost issue that needs to be settled in the present appeal is that whether the impugned order was adjudicated by the proper officer or not.

6. In this regard I find the judgement of the Karnataka High Court in the case of M/s Motorola India Ltd [2012 (275) ELT 53 Kar] which clearly states that rate of duty determination includes determining of issues whether (i) any goods dutiable, (ii) rate of Customs duty on any goods is nil, (iii) goods are covered under particular notification or order issued by Central Government or CBEC, granting total or partial exemption from duty, and (iv) value of any goods for assessment be enhanced or reduced by matters specifically provided under Customs Act, 1962. The relevant portion of the judgement is reproduced below:

“40. Therefore, the expression ‘rate’ is often used in the sense of a standard or measure. ‘Rate’ generally is an impost, usually for current or recurrent expenditure, spread over a district or other local area and is distinct from an amount payable for work done upon or in respect of particular premises. ‘Rate’ is defined by Webster to be the price or amount stated or fixed for anything. The word ‘rate’ includes any toll, due, rent, rate or charge. It means the scale or amount of any other charges. The word ‘rate’ is used with reference both to a percentage or proportion of taxes, and to a valuation of property. ‘Rate’ is used in an Act declaring that the Legislative Assembly shall provide by law for a uniform and equal rate of taxation and assessment, applies to the percentage of fixation, as used in connection with ‘taxation’ and to the valuation of the property, as used in connection with ‘assessment’. It is a valuation of every man’s estate or setting down how every one shall pay, or be charged with, to any tax. By the use of the expression ‘rate’ a relation between the taxable income and the tax charged is intended, but the relation need not be of the nature of proportion of fraction. The Explanation to sub-section (5) of Section 129D of the Customs Act, 1962, the expression includes the determination of a question relating to the rate of duty, to the value of goods for the purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for the purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. Determination of rate of duty in relation to any goods include determination of a question whether any goods or not, whether there is an import or not the process if any undertaken in the service centre amounts to manufacture or not, whether there is an “export” or not and if the goods imported or exported during are dutiable goods or not would fall within the meaning of the expression ‘determination of the rate of duty of Customs or the value of the goods for the purposes of assessment of duty’ used in Section 130 and Section 130E of the Act. Therefore, the phrase ‘rate of tax’ does not mean fraction of tax payable because what is the tax payable i.e., fraction payable is decided by the legislature. Once that is prescribed by the legislature in the Act, the Court cannot sit in judgment and alter or modify the said rate of tax. The Court has no jurisdiction to go into the correctness or otherwise of the rate of tax payable in the sense the rate prescribed by the legislature. Therefore, the argument that the rate of tax means only the rate at which tax is payable or a fraction is unsustainable.

41. Broadly the following disputes do not fall within the jurisdiction of High Court under Section 130 of the Act :-

- (a) Dispute relating to the duty of customs payable on any goods.



- (b) The value of the goods for the purposes of assessment.
- (c) A dispute as to the classification of goods.
- (d) Whether those goods are covered by an exemption notification or not.
- (e) Whether the value of goods for the purposes of assessment is required to be increased or decreased.
- (f) Whether what is imported or exported is goods which attracts customs duty.

42. From the aforesaid discussion, it is clear that an order passed by the Appellate Tribunal relating to the determination of any question having relation to the rate of duty of customs or to the value of goods for the purposes of assessment lies to the Supreme Court under Section 130 of the Act and not to the High Court under Section 130.

43. The intention behind this bifurcation of jurisdiction between the Apex Court and the High Court seems to be that more often than not, any decision on these aforesaid aspects not only affects the interest of the manufacturers who are parties thereto, but also to the manufacturers of those products throughout the country. In a country governed by Parliamentary legislation because of the territorial bifurcation in forming states and because of the divergent opinion which is possible, the customs duty payable would vary from place to place. In order to bring uniformity in the levy of customs duty throughout the country and consequently to see that the country's finance is not affected, the Parliament has vested the jurisdiction to decide the disputes with the Apex Court. Therefore, we see a duty policy underlining this bifurcation of the jurisdiction between the Apex Court and the High Courts. All other matters other than what is set out above, which relates to the individual importers or exporters and all disputes based on assessment orders which have attained finality, such as the benefits to which they are entitled to, refunds, duty drawbacks, rebates, etc., which relate to a particular manufacturer falls within the jurisdiction of the High Courts."

7. Now coming to the appellant's submission that as per the Circular No. 1049/37/2016-C.X. dated 29.09.2016 that Superintendent cannot adjudicate the cases involving taxability, classification, valuation and extended period of limitation. By applying the currency of the judgement cited above I find the matter was not adjudicated by a 'proper officer'. Therefore, I remand back the matter with a direction that the case be readjudicated by a proper officer in terms of the Circular No. 1049/37/2016-C.X. dated 29.09.2016.

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

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

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 29.03.2019

Attested

Vinod Lukose

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



By RPAD.

To,

M/s. J.K Engineering Co.,
3-A, Mahashakti Industrial Estate,
Nr. Ajay Estate, Opp. Yamuna Estate,
B/h Sonya Ceramic, Naroda Road,
Ahmedabad – 380025

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal 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.

