



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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क फाइल संख्या (File No.): V2(29)97 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-35-18-19

दिनांक (Date): 13-Jul-18 जारी करने की तारीख (Date of issue): 8/8/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 567-595-Reb-II-17-18 Dated: 12/12/2017
issued by: Assistant Commissioner Central Excise (Div-V), Ahmedabad North

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

M/s Nandan Terry 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 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



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

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-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण 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 वहां 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 वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



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. 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 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 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 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।

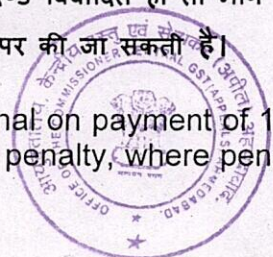
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 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. Nandan Terry Pvt Ltd, Survey No.357/A/6, Kharati to Dholi Road, Dholi Rupgadh Dholi Integrated Spinning Park Ltd, Village- Dholi, Taluka – Dholka, Dist.- Ahmedabad (Gujarat) 382 240 (henceforth, “*appellant*”) has filed the present appeal against the Order-in-original No. 567-595-Rebate-II-2017-18 dated 12.12.2017 (henceforth, “*impugned order*”) passed by the Assistant Commissioner, Central GST & C. Ex., Div-V, Ahmedabad - North (henceforth, “*adjudicating authority*”).

2. The facts of the case, in very brief, are that the appellant, a manufacturer of 100% Cotton Terry Towels, filed some (29) rebate claims worth Rs.32,14,915/- under rule 18 of the Central Excise Rules, 2002 in respect of goods exported under payment of duty. Scrutiny of documents submitted with the rebate claims revealed that appellant had also claimed duty drawback under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (*DBK Rules*, for short) at higher rate of drawback. The higher rate of drawback is applicable when Cenvat facility has not been availed, whereas, appellant had availed the facility of Cenvat credit. The adjudicating authority, relying on the decision of Madras High Court in the case of Raghav Industries Ltd v. UOI [2016(334) ELT 584 (Mad.)] concluded that appellant was not entitled to both rebate and higher rate of drawback and rejected the rebate claims.

3. The following are the main grounds of appeal, in very brief-

3.1 Appellant states that substantive benefit of rebate has been deined without allowing effective personal hearing as they did not receive any intimation of personal hearings fixed subsequent to their adjournment request letter dated 17.11.2017.

3.2 Appellant submits that they have not taken any credit in respect of inputs and input services; that goods were exported on payment of duty by utilizing the Cenvat credit account of capital goods; that therefore, they are eligible for higher drawback as no credit has been taken on inputs and input services.

3.3 Appellant quotes the definition of “drawback” given under DBK Rules to state that the DBK Rules do not provide for drawback of duty paid on capital goods and there cannot be any objection in taking credit of duty paid on capital goods while claiming drawback as per Notification No.131/2016-Cus(NT).

3.4 Appellant further quotes the clarification of expression “when Cenvat facility has not been availed” given in para 11 and 12 of the Notification No.131/2016-



Cus(NT) to state that drawback is allowable only for inputs and input services used in the manufacture of finished goods and not linked to credit of duty paid on capital goods. Appellant emphasizes that there is no restriction on taking credit on capital goods for higher drawback.

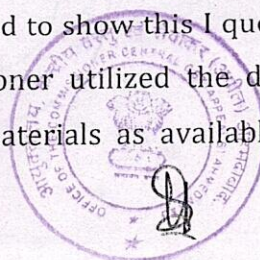
3.5 Appellant argues that it is settled law that substantial benefit under any scheme cannot be denied on the basis of procedural lapses.

3.6 With regard to adjudicating authority's reliance on Raghav Industries Ltd's case, appellant states that in that case various provisions of Central Excise Act, Customs Act, DBK Rules, rule 18 of Central Excise Rules, 2002 and notifications issued from time to time were not brought to the notice of Hon'ble Court and not considered in details; that Hon'ble Court has not given any ruling on the expression "drawback when Cenvat facility has not been availed" which is the relevant factory to decide the case. As per appellant, the decision in the case of Raghav Industries Ltd is not squarely applicable as the provisions of rules and notifications mentioned were not examined by the Court.

4. As regard the personal hearing in the matter, Shri P P Jadeja, authorized representative appeared for hearing on 21.03.2018 and requested for adjournment. Thereafter, personal hearing was fixed on 16.05.2018, 13.06.2018 and 26.06.2018 and intimated under letters dated 08.05.2018, 31.05.2018 and 18.06.2018, respectively mentioning that the opportunity being given was the last. Considering that appellant has failed to appear on any dates, I presume that appellant is not desirous of personal hearing and therefore I proceed to decide the case.

5. I have carefully gone through the appeal. The short issue involved is whether rebate of duty paid on goods exported is admissible when higher rate of drawback – the drawback rate applicable when Cenvat facility has not been availed – has been claimed by the appellant. As per adjudicating authority, allowing rebate in such a situation would tantamount to double benefit, whereas, appellant argues that restriction is only with regard to availment of credit on inputs and input services and not on availment of credit on capital goods.

5.1 After going through the decision given by Hon'ble Madras High Court in the case of Raghav Industries Ltd v. UOI and relied on by the adjudicating authority, I am of the view that the present issue is squarely covered in the decision of Madras High Court. The facts of two cases are very similar and to show this I quote para 2 of the decision where it is clearly stated that petitioner utilized the duty paid inputs without availing credit of duty paid on the materials as available under Cenvat



Credit Rules, 2004 and that for paying duty on the goods exported, the petitioner utilizes the credit of duty paid on capital goods used in the manufacture of yarn.

2. It is the case of the petitioner that they are manufacturers of synthetic and blended textile yarn made out of raw materials, viz., duty paid polyester staple fiber or polyester viscose staple fiber. The petitioner utilised the said duty paid inputs without availing the benefit of Cenvat credit of the duty paid on the materials, as available under the Cenvat Credit Rules, 2004. The petitioners exported finished goods viz., yarn to various countries on payment of excise duty on yarn. For paying the excise duty on the goods exported, the petitioner utilises the credit of duty paid on the capital goods used in the manufacture of such yarn.

5.2.1 I further extract para 14 to 18, wherein Hon'ble Court has found that petitioner is not entitled to claim both the rebates, i.e., rebate under rule 18 of the Central Excise Rules, 2002 and duty drawback under DBK Rules.

14. As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.

15. In the judgment relied upon the learned counsel for the petitioner, the Hon'ble Supreme Court has held that the benefits of rebate on the input on one hand as well on the finished goods exported on the other hand shall fall within the provisions of Rule 18 of Central Excise Rules, 2002 and the exporters are entitled to both the rebates under the said Rule.

16. In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002. Since the issue, involved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

17. As per the proviso to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner is not entitled to claim both the rebates.

18. In these circumstances, the respondents have rightly rejected the claim made by the petitioners. I do not find any error in the order passed by the respondents and the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

5.2.2 Therefore, considering that an identical issue stands decided by Hon'ble Madras high Court, and considering that appellant has not come up with any contrary decision, I am bound to follow the case law of Raghav Industries Ltd and consequently, impugned order is liable to be upheld.

6. Accordingly, the impugned order is upheld and appeal is rejected.

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

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



उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested

S. Hudda
(Sanwamal Hudda)
Superintendent
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,
M/s. Nandan Terry Pvt Ltd,
Survey No.357/A/6, Kharati to Dholi Road,
Dholi Ruggadh Dholi Integrated Spinning Park Ltd,
Village- Dholi, Taluka - Dholka, Dist.-Ahmedabad (Gujarat) 382 240

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Joint/Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Asstt./Dy. Commissioner, CGST Div-V, Ahmedabad- North
5. Guard File.
6. P.A.



