



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
☎: 079-26305065 टेलिफैक्स : 079 - 26305136

S881/105885

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)21 /North/Appeals/ 2018-19
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-39-18-19
दिनांक (Date): 09-Aug-18 जारी करने की तारीख (Date of issue): 28/8/2018
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/16/Dem/AC/2017/KDB Dated: 19/03/2018
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 Lubi Industries LLP

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



(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



- (ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.
- (b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।
- 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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायिकरण को एक अपील या केंद्रीय 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।
- One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER IN APPEAL

This is an appeal filed by M/s Lubi Industries LLP, Near Kalyan Mills, Naroda Road, Ahmedabad-380025 (herein after referred to as the appellants) against the OIO No. MP/16/Dem/AC/2017/KDB dated 19.03.2018 (herein after referred to as the impugned order) passed by the Asstt. Commissioner, Division-II, GST, Ahmedabad (North) (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were engaged in manufacture of P D submersible pumps and parts etc and they were recovering handling and freight distribution charges in guise of freight charges from their customers for clearing the goods to their door premises but the said charges were not being included in the assessable value of the goods and they were not paying duty on the said charges. During the period from January-2017 to June, 2017, they had recovered handling and freight contribution charges amounting to Rs. 5,49,875/- involving central excise duty of Rs. 35,930/- but had not paid the same. A show cause notice dtd. 30.01.2018 was served upon the appellants. The adjudicating authority, after having considered their defence arguments and case records, held that the appellants were collecting the said amount as a certain percentage on the value given in invoice, not on the freight charges paid by them to the transporter. The adjudicating authority further held that it was nothing but outward handling charges collected from their customers which have not been included in the assessable value of excisable goods cleared by them. Accordingly, the adjudicating authority, vide the impugned order, confirmed the demand of central excise duty of Rs. 35,930/- along with interest and also imposed penalty of equal amount under Section 11 AC of the Act.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That it is a settled legal position that in case of "ex-works" price, the elements like cost of transportation from the place of removal i.e. the factory of the assessee to the place of delivery were to be excluded and any recovery made from the buyers by way of a separate agreement or separate arrangement was not to be considered as a part of the "transaction value";
- b) That the buyers were informed that separate charges as freight and handling for freight, handling and storage and forwarding and such facilities were to be charged by way of a separate arrangement and such charges were not charged from all buyers and this recovery was made from a few buyers located in nearby areas;



- c) That even if freight was a part of the transaction value and a manufacturer recovered additional amount from the customer as freight or transportation charges, the revenue cannot demand excise duty on such excess recovery as any profit made by the manufacturer on such elements and facilities would not attract excise duty;
- d) That any expenses incurred after the goods were removed from the factory are not includable in the transaction value even though the nomenclature of such elements of expenses was storage and/or outward handling charges;
- e) That it is a settled legal position that elements like freight, transportation, transit insurance, outward handling, forwarding etc. do not form part of the assessable value of the excisable goods;
- f) That they rely on the judgment of Hon'ble Supreme Court in the matter of Commissioner, Nagpur vs. Ispat Industries Limited reported in 2015 (324) ELT-670 (SC), Commissioner, Noida vs. Accurate Meters Limited reported in 2009 (235) ELT-581 (SC) and Indian Oxygen Limited reported in 1988 (36) ELT-723;
- g) That there are no findings to the effect that though the appellants were aware about their liability of service tax and with intention to evade the same, it was not paid. Therefore the demand is barred by limitation and mandatory penalty cannot be imposed as held in the case of M/s Hindalco Industries reported in 2003 (161)ELT-346, M/s Kirloskar Oil Engines Ltd. vs. CCE, Nasik reported in 2004 (178)ELT-998 etc.

4. The personal hearing in the case was held on 24.07.2018 in which Shri Jayendra R. Shah, Executive of the company appeared on behalf of the appellants. He reiterated the grounds of appeal and submitted that freight is charged separately at factory gate.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeals. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions made during personal hearing.

6. I find that the issue to be decided in the instant case is whether the assessable value has been rightly determined by the appellants by not including therein the freight contribution charges received as a fixed percentage of the value.

7. I find that the appellants have contended that the sale took place at their factory gate and they had a separate arrangement of charging handling and freight distribution charges in addition to the value shown in the invoices on which they have paid the applicable central excise duty. I find that the



department has sought to include these charges in the assessable value and has demanded applicable central excise duty thereon. On perusal of the documents and case records, I find that there is no dispute about the point of sale that it takes place at the factory gate i.e. in this case, the factory gate of the appellants is the place of removal. In such case, it is the transaction value which is used for valuation of goods for purpose of charging of duty of central excise as per the provisions of Section 4(1) of the Actg, 1944. The transaction value has been defined in Section 4 (3) (d) of the act which has been discussed by the adjudicating authority at length. For ease of understanding, the relevant part of the definition is reproduced herein below;

"Section 4 (3) (d)- "Transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the notice, **by reason of, or in connection with the sale**, whether payable at the time of sale or at any other time, including, but not limited to any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling....."

(emphasis supplied)

From the above definition, it is very clear that all the expenses which have been incurred by reason or or in connection with the sale are to be included for arriving at the transaction value. As emphasized above, it is the sale which is the deciding factor and all the expenses which are connected with the sale only are to be considered for arriving at the transaction value. Once the sale is complete, any expenses incurred which have no relation with the sale are not to be included in the transaction value. In the instant case, there is no dispute that the sale took place at the factory gate and on perusing the records, there is nothing in the findings of the adjudicating authority to suggest that the sale took place at the buyer's premises and the point of sale was other than the factory premises of the appellants. Accordingly, I find that all the expenditure incurred up the place of removal i.e. the factory gate only shall be includible in the assessable value.

8. I find support from the CBEC Circular No. 1065/4/2018-CX issued from F. No. 116/23/2018-CX-3 dtd. 08.06.2018 as per which, the principle of CCE vs. Ispat Industries Ltd. (supra) laid down by the Hon'ble Supreme Court has been asked to be applied for determination of 'place of removal' to the extent that the 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. I find that the case law of M/s Supreme Petrochem reported



in 2009 (240) ELT-38 (Tri. LB) relied upon by the adjudicating authority also makes it very clear that the expenses incurred on account of several factors which have contributed to its value up to the date of sale, which apparently would be the date of delivery are liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee up to the date of delivery will only be includible. In the instant case, it is not the case of the department that the expenses have been incurred up to the date and place of delivery i.e. the factory gate of the appellants. I therefore agree with the contentions raised by the appellants and accordingly allow the appeal.

9. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

U. Shankar

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद

दिनांक:

सत्यापित

R.P.A.D.

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s Lubi Industries LLP,
Near Kalyan Mills,
Naroda Road,
Ahmedabad-380025

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-II, Ahmedabad (North),
- (4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A.File.



