



# 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



रजिस्टर डाक ए .डी .द्वारा

38/1040  
3874

क फाइल संख्या (File No.): V2(44)1 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-6-18-19**

दिनांक (Date): **21-May-18** जारी करने की तारीख (Date of issue): 21-6/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No **1236/R/I/2017** Dated: **31/01/2018**

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

**M/s Wood Star (India) 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।



Cont...2



- (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 मैन्टल 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 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 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 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 Appellate 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।

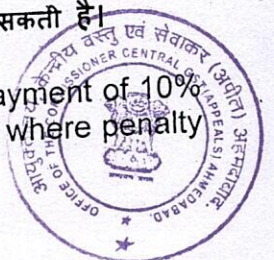
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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

This appeal has been filed by M/s. Woodstar India Private Limited, Survey No. 258, Vasodara, Tal. Sanand, Dist. Ahmedabad, Gujarat [for short – ‘appellant’] against OIO No. 1236/R/I/2017 dated 31.1.2018, passed by the Assistant Commissioner, CGST and Central Excise, Division III, Ahmedabad North Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts are that the appellant, filed rebate claims, amounting to Rs. 41,46,832/-, on 14.11.2017, through speed post, in respect of three ARE-1s. Thereafter, a show cause notice, was issued to the appellant *inter alia* asking as to why the refund claims should not be rejected on the grounds of limitation.

3. The said refund claims were thereafter, rejected by the adjudicating authority vide the impugned OIO dated 31.1.2018, on the grounds that the claims were time-barred.

4. Feeling aggrieved, the appellant has filed this appeal on the following grounds:

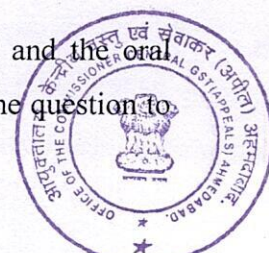
- that the impugned OIO is illogical, illegal, bad in law and without due consideration to the facts and circumstances of the case;
- that the principles of natural justice was not followed;
- that the adjudicating authority erred in holding that as per explanation to section 11B, rebate claims are to be filed within one year from the *relevant date*;
- that no time limit is prescribed in notification No. 19/2004-CE(NT); that all conditions are specified in the said notification in terms of Rule 18 of the Central Excise Rules, 2002, which gives power, to issue notification prescribing conditions, limitation and procedures; that what is not prescribed in the notification, cannot be imported into the said notification;
- that for the period between 6.9.2004 to 1.3.2016, when the basic notification no. 19/2004-CE(NT), was amended vide notification No. 18/2016-CE(NT) dated 1.3.2016, there was no time limit prescribed to file rebate claims and hence for the period from 6.9.2004 to 1.3.2016, section 11B is not applicable to rebate claims;
- that they would like to rely on the case of M/s. Dorcas Market Makers P Limited [2012(281) ELT 227], [2015(321)ELT 45], [2015(325)ELT A104]; JSL Lifestyle Limited [2015(326)ELT 265];
- that the limitation of one year as per Section 11B is not applicable to goods cleared before 1.3.2016; that the appellant had cleared the goods for export during August and September 2013;
- that they would like to rely on the case of Suksha International and Nutan Gems [1989(39) ELT 503(SC)], A V Narsimhalu [1983(13) ELT 1534(SC)], Formica India[1995(77) ELT 51(SC)], Mangalore Chemicals and Fertilizers Limited [1991(55) ELT 437(SC), Sun Pharmaceuticals [2015(328) ELT 792(GOI)].

The appellant *inter alia* prayed that they be granted the rebate of duty.

5. Personal hearing in the matter was held on 16.5.2018, wherein Shri J.K.Bhatt, Advocate, appeared on behalf of the appellant. He reiterated the grounds of appeal and also filed a written submission during the course of personal hearing, reiterating and highlighting the fact that they were eligible for rebate since the limitation period of one year was inserted in notification No. 19/2004-CE(NT) only on 1.3.2016 vide notification No. 18/2016-CE(NT).

6. I have gone through the facts of the case, the grounds of appeal and the oral averments and written submission, made during the course of personal hearing. The question to be decided primarily is, whether the appellant is eligible for refund, or otherwise.

7. Facts which are not disputed are that that the appellant had cleared three consignment of finished goods under different ARE-1s during the period of August 2013 to



1



September 2013. It is the appellant's claim before the adjudicating authority that they had some dispute regarding delivery of goods with their overseas buyer and realized the amounts during the period from 28.9.2016 to 3.10.2017. The rebate claim was filed by the appellant on 14.11.2017.

8. The appellant has disputed the findings of the adjudicating authority rejecting the rebate claims on the grounds of limitation in terms of the provisions laid down under section 11B of the Central Excise Act, 1944. The appellant's claim is that the rebate claims filed under notification No. 19/2004-CE(NT), issued in terms of powers granted under Rule 18 of the Central Excise Rules, 2002, clearly prescribes the procedure and conditions and that the time limit of one year, was no where specified in the Rule or the notification, *ibid*.

9. It is a fact, that vide notification No. 18/2016-CE(NT) dated 1.3.2016, the basic Notification No. 19/2004-CE (NT), granting rebate for exports, was amended to incorporate the following:

*In the said notification:-*

(1) *under heading "(2) Conditions and limitations", in paragraph (e), for the words "the market price", the words "the Indian market price" shall be substituted;*

(2) *under heading "(3) Procedures", in paragraph (b), in sub-paragraph (i), after the words "shall be lodged", the words, figures, letter and brackets "before the expiry of the period specified in section 11B of Central Excise Act, 1944 (1 of 1944)" shall be inserted.*

10. However, before moving forward, I would like to reproduce the relevant extracts from the judgement of the Hon'ble Supreme Court of India, in the case of Uttam Steel [2015 (319) E.L.T. 598 (S.C.)

*13. Shri Bagaria's argument based on the proviso to rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. It is clear from Section 11B(2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (supra) would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12-8-2003.*

[emphasis added]

11. The contention of the appellant is that since there is no time limit was prescribed in the basic notification no. 19/2004-CE(NT) and since the time limit was only introduced on 1.3.2016, and as their goods were exported before 1.3.2016, time limit prescribed under section 11B of the Central Excise Act, 1944, is not applicable to their case. The appellant has heavily relied upon the case of M/s. Dorcas Market Makers P Limited [2012(281) ELT 227], [2015(321)ELT 45], [2015(325)ELT A104]. However, I find that in light of the aforementioned judgement of the Apex Court, the Hon'ble Madras High Court in the case of M/s. Hyundai





Motors India Ltd [2017 (355) ELT 342 (Mad.)], wherein the Court took note of the dispute [ a similar one] in para 14, viz.

14. Therefore, the appellant company claims that in the Notification No. 19/2004, dated 6-9-2004, no time-limit is prescribed to submit the application for claiming rebate of duty for the export of cars.

subsequently, held as follows:

24. Therefore, the aforesaid decision of the Hon'ble Supreme Court, following the decision in the case of *M/s. Mafatal Industries Limited & Others. v. Union of India & Others* reported in 1997 (89) E.L.T. 247 (S.C.) = (1997) 5 SCC 536 that such claims for rebate can be made only under Section 11B within the period of limitation as prescribed under the Act.

25. Therefore, the contention of the appellant that no time-limit is prescribed in the notification could not be accepted in view of proviso (a) to sub-section (2) of Section 11B of the Central Excise Act. Therefore, reading of Rule 18, there is no specific relevant date prescribed in the Notification to the effect that the relevant date on which final products or goods was cleared for export.

26. Admittedly, the goods were exported on 10-11-2008 and 15-11-2008. Thereafter, the appellant paid additional duty on 15-11-2008. The claim of rebate of duty made by the appellant company on 27-11-2009<sup>1</sup> by claiming that period of limitation is within one year under Section 11B of the Act. Therefore, Issue No. 1 is answered against the assessee.

The issue no. 1, supra, framed by the Hon'ble Court was whether Rule 18 of the Central Excise Rules, 2002, is an independent one and Section 11B of the Central Excise Act, 1944 is not applicable for rebate of duty for the export of goods for submitting the claim application within the period of limitation. Incidentally in the said judgement, the court had considered the judgements of *M/s. Dorcas Market Makers P Limited*, before arriving at the aforementioned decision.

12. Therefore, duly following the rationale of the aforementioned judgement of the Hon'ble Madras High Court, in the case of *M/s. Hyundai Motors India Ltd, supra*, the appeal filed by the appellant is rejected and the impugned OIO dated 31.1.2018, is upheld. Even otherwise, the appellant had filed the rebate claims on 14.11.2017, when the time period of one year had already been incorporated in the notification No. 19/2004-CE(NT). Even on this count, I find that the appeal filed by the appellant, is not tenable.

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

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

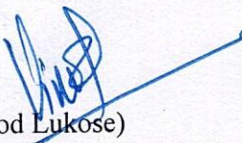
Date 21.5.2018

उमा शंकर  
(उमा शंकर)  
आयुक्त (अपील)





Attested

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

By RPAD.

To,

M/s. Woodstar India Private Limited,  
Survey No. 258,  
Vasodara, Tal. Sanand,  
Dist. Ahmedabad,  
Gujarat

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Central Tax Division-III, Ahmedabad North.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
5. Guard File.
6. P.A.





