



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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6860/06864

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.) : V2(29)70 /North/Appeals/ 2018-19
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-63-18-19
दिनांक (Date): **11-Sep-18** जारी करने की तारीख (Date of issue): 29/10/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker , Commissioner (Appeals)**

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **18/AC/D/2017/AKJ** Dated: **29/01/2018**
issued by: **Assistant Commissioner**-Central Excise (Div-IV), Ahmedabad North

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

M/s Laxmi Dye Chem

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 हैं



(D) 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, मेघानी 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 न्याधिकरण 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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्याधिकरण 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 मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (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.



the appellant by stating that the cheque amount was returned by the appellant to M/s Yahska in cash after deducting VAT amount.

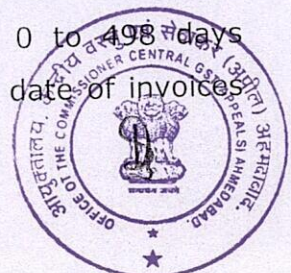
- Therefore, penalty cannot be imposed under Rule 26(2) of CER.
- They relied on case laws in their favour.

4. Personal hearing in the matter was held on 24.08.2018. Shri Purvin Shah, consultant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. At the outset, I observe that the allegations against the appellant is that they had indulged in selling of excisable goods without bill to different buyers; that they sold Cenvatable Goods viz imported as well as indigenous organic chemicals (phenol, Para Dichloro Bensene, Naphthelene Crude etc) to M/s Yahska without physically supplying the corresponding goods so as to avail CENVAT credit fraudulently on the basis of invoices issued by them.

6. I observe that the appeal filed M/s Yahska against the impugned order has already decided by me vide OIA NO.AHM-EXCUS-002-APPP-13-18-19 dated 25.05.2018 by upholding the allegation alleged in the impugned order and accordingly uphold the demand of CENVAT Credit of Rs.41,39,793/- and penalty of Rs.5,00,000/- imposed on them. In the instant appeal it was observed by the investigating authority that the appellant have supplied only invoices so as to enable M/s Yahska to avail the said credit fraudulently. I observe that the main grounds for such allegations and confirmation of duty with interest on M/s Yahska and imposition of penalty by the adjudicating authority on M/s Yahska as well as the appellant are as under:

- [i] Documents withdrawn under Panchnama dated 16.09.2014 from the appellant and M/s Harlaxmi Chemislov reveals that they have not supplied the corresponding goods along with Cenvatable invoices and only passed on Cenvat credit fraudulently; that the said facts have been admitted by the authorized persons of the appellant.
- [ii] As per documents submitted by M/s Yash Road Lines, Gandhidham who was engaged in transportation by the appellant and M/s Harlaxmi chemislov clearly shows that the corresponding goods have never reached at the factory premises of the M/s Yahska and this fact was also admitted by the authorized person of the said Road lines.
- [ii] The ground plan & rented agreement submitted by the appellant and M/s Harlaxmi chemislov reveals that they do not have the facility to store such a hazardous & Inflammable liquid cargo at any place; that the invoices issued by them reveals that there is a difference ranging from 0 to 498 days between the date of invoices issued by them and from the date of invoices

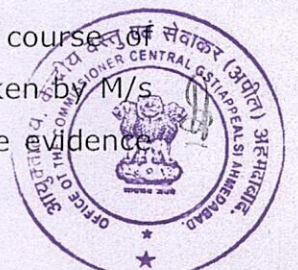
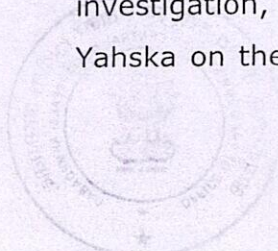


issued by the manufacturers/1st stage dealer/importers etc. This fact was admitted by the authorized persons of the appellant.

- [iii] The Director of the M/s Yahska admitted that the raw materials viz phenol, para dichloro benzene refine naphthalene had never been used as their raw materials in their finished goods; that they had taken Cenvat credit on said materials wrongly on the strength of invoices issued by the appellant without receiving the corresponding goods during the relevant period.
- [iv] Admitting their liability, M/s Yahska had paid voluntarily an amount of Rs.37,00,000/- during the course of investigation in the month of November-December 2014.
- [v] 47 other manufacturers who had also availed Cenvat credit on the basis of Cenvatable invoices issued by the appellant and M/s Harlaxmi chemislov, without physically receipt of the corresponding goods and they have also voluntarily paid the amount of Cenvat credit wrongly availed with interest and penalty as provided under the provisions of CEA.

6. The adjudicating authority has confirmed the duty demand and imposed penalty on M/s Yahska on the basis of alleged grounds mentioned above as he observed that M/s Yahska had purportedly obtained invoices on the raw materials in question without receipt of goods from the appellant and M/s Harlaxmi chemislov so as to avail the CENVAT credit involved therein fraudulently. I observe that it is a fact that all the allegations involved in the instant case was admitted by the authorized persons of the appellant, M/s Harlaxmi chemislov, M/s Yahska and also by the transporters in their statements recorded by DGCEI. Further, I also observe that the other manufacturers who have availed Cenvat credit on the basis of invoices supplied by the appellant were also admitted the fact that they had not received any goods from the appellant, instead only invoices were received so as to avail Cenvat credit fraudulently. Since the appellant themselves have admitted that they had not delivered the goods to their customers and also non-receipt of the goods by the appellant is duly supported by the statements of manufactures and transporters, in my opinion, the allegations mentioned above is sufficient to prove the case against the appellant that they did not supply the goods.

7. The other contention of the appellant that there was no corroborative evidence in the instant case. I observe that all these contentions are vague in nature, looking into the facts and evidence brought out by the investigating authority as mentioned at para above. I find that in the instant case, the DGCEI has conducted searches in various locations and recorded statements of authorized persons such as the appellant, M/s Harlaxmi Chemislov, M/s Yahska and other manufacturers and on the basis of valid documents withdrawn from the premises of the appellant and also from other manufacturing units during the course of investigation, they worked out the amount of CENVAT credit wrongly taken by M/s Yahska on the basis of invoice supplied by the appellant. Thus, from the evidence



narrated by the investigating authority, it is clear that the entire availment of credit by M/s Yahska is only on the strength of documents without actual receipt of the goods. Further, the investigation and documents revealed that the appellant do not have the facility to store such a hazardous & Inflammable liquid cargo at any place. Further, the invoices issued by them reveals that there is a difference, ranging from 0 to 498 days, between the date of invoices issued by the appellant and from the date of invoices issued by the manufacturers/1st stage dealer/importers which also an admitted facts by the said dealer. This clearly shows that no goods have been transported by them to any manufactures at any stage. In the circumstances, I do not find any merit in the above mentioned contention of the appellant. Accordingly, I uphold the order of the adjudicating authority with regard to imposition of penalty as the entire activity was vitiated by fraud coupled with misstatement and suppression of facts with intent to evade payment of duty. The act being fraudulent, imposition of penalty also does not suffer from any illegality, particularly, in view of the systematic manner in which the fraud was committed. Therefore, looking into the apt of the case, I do not find any merit to interfere in the quantum of penalty imposed by the adjudicating authority under Rule 26(2) of CER.

8. In view of above, I reject the appeal filed by the appellant. The appeal stands disposed of accordingly.

उमा शंकर

(उमा शंकर)
आयुक्त (अपील्स)
Date : .09.2018

Attested

(Mohan V.V)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To
M/s Laxmi Dye Chem,
303/A, Ganesh Plaza, Opp. Navrangpura Bus Stand,
Navrangpura, Ahmedabad

Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad North
3. The Deputy/Assistant Commissioner, CGST Dn-IV, Ahmedabad North.
4. The Assistant Commissioner, System-Ahmedabad North.
5. Guard File.
6. P.A. File.



