



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  
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6751/106755

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.) : **V2(87)73 /North/Appeals/ 2018-19**  
ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-70-18-19**  
दिनांक (Date): **14-Sep-18** जारी करने की तारीख (Date of issue): 24/10/2018  
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 **02/Ref/V/18-19** Dated: **23/04/2018**  
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 Ford India Private Limited**

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:

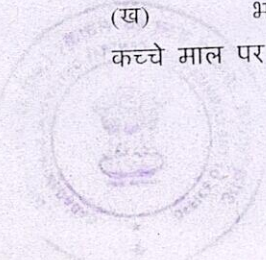
(1)(क)(i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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

(D) In case of rebate of 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) उक्तलिखित 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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 न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित हैं।
- (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 appeal has been filed by M/s. Ford India Pvt. Ltd., Survey number 1, Village North Kotpura, Tal: Sanand, Ahmedabad (hereinafter referred to as "the appellants") against the Order-in-Original number 02/Ref/V/18-19 dated 23.04.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad-North (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellants were holding Central Excise Registration number AAACM4454HEM007 for manufacture of motor vehicle falling under Ch. 87 of the Central Excise Tariff Act, 1985. The appellants filed refund claims amounting to ₹ 19,43,860/- in view of the Notification number 12/2012-CE dated 17.03.2012. On scrutiny of the claims, it was noticed that the appellants had filed refund claims amounting to ₹ 5,56,000/- in respect of the vehicles cleared during the months of December 2016 beyond the time limit prescribed under the said notification.

3. Thus, a show cause notice dated 12.04.2018 was issued to the appellants proposing rejection of the amount of ₹ 5,56,000/-. The adjudicating authority, vide the impugned order, rejected the amount of ₹ 5,56,000/- out of the total amount of ₹ 19,43,860/- under Section 11B of the Central Excise Act, 1944 read with the Notification number 12/2012-CE dated 17.03.2012 and ordered to recover the said amount already credited by the appellants in their PLA account under Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944

4. Being aggrieved, the appellants have filed the present appeal before me. The appellants argued that for all the delay, the appellants were never at fault as they made all the genuine efforts to submit the claim and the supporting documents before the tax officers, on time. However, due to winding up of LUT operations in Chennai, transfer of office files during GST migration and lack of clear identification of the jurisdiction officer at Chennai, the appellants could not file the tax claim with the right tax officer. The appellants further argued that, even if it would be assumed that the delay was from the appellant's perspective, the delay was only for 7 days and there are no disputes on any other grounds except delay in filing the refund claim. The delay is merely a procedural lapse and hence, the appellants should not be penalized on this.

5. A personal hearing in the matter was held on 27.08.2018 and Shri Ashish Ajmera, Authorised Representative of the appellants, appeared before me and reiterated the contents of the grounds of appeal.



6. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. Prima facie, I find that the appellants had filed the refund claims under Notification number 12/2012-CE dated 17.03.2012. Now, the main issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground of limitation, or otherwise. I find that the adjudicating authority has not denied the legitimacy of the refund claim in terms the Notification number 12/2012-CE dated 17.03.2012. The claim was rejected only on the ground that it was delayed by only seven days. Thus, I start with the question that whether limitation under Section 11B of the Central Excise Act, 1944 is applicable to a claim that is exempted by notification. In this regard, I would like to quote condition number 26 of serial number 273 of the Notification number 12/2012-CE dated 17.03.2012, as below;

*"a) The manufacturer pays duties of excise at the rate specified under the First Schedule and the Second Schedule read with exemption contained in any notification of the Government of India in the Ministry of Finance (Department of Revenue), at the time of clearance of the vehicle;*

*(b) the manufacturer takes credit of the amount equal to the amount of duty paid in excess of that specified under this exemption, in the Account Current, maintained in terms of Part V of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs and **thereafter files a claim for refund of the said amount of duty before the expiry of six months from the date of payment of duty on the said motor vehicle**, with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, along with the following documents, namely:- (1) an intimation that the amount of refund of duty claimed has been credited by the manufacturer in his Account Current, also stating the amount of credit so taken;"*

Thus, it is very clear that the appellants were supposed to apply for the refund within a period of six months from the date of payment of duty. In their grounds of appeal, I find that the appellants have very carefully avoided the technical issues pertaining to the condition number 26 of serial number 273 of the Notification number 12/2012-CE dated 17.03.2012. In paragraph 11 of their grounds of appeal, the appellants claimed that the LUT officers at Chennai were not ready to accept any claim pertaining to Sanand plant. I could find no such denial on the part of the LUT officers of Chennai in the entire grounds of appeal. The appellants have not submitted any document to prove that their request was denied by the LUT officers. Mere Verbal



allegation has no role to play, in the eyes of law, in absence of documentary evidence. In paragraph 14 of their grounds of appeal, the appellants claimed that even if it is assumed that they had committed the delay, the delay was only for 7 days which is a mere procedural lapse. However, condition number 26 of serial number 273 of the Notification number 12/2012-CE dated 17.03.2012 begins with the non-obstante clause and therefore, any other provisions contrary to what is stated therein will not be applicable. The appellants have quoted some judgments of Mumbai Tribunal. However, I find that those are individual sporadic judgments and are not applicable as a whole. I quote the view of the CESTAT, West Zonal Bench, Ahmedabad in the case of Saurashtra Cement Ltd. vs. CC, Jamnagar [2013(297)ELT 365 (Tri-Ahmd.)] as below;

*"The Hon'ble High Court held that refund application made within a period of three years after discovery of mistake is not barred by limitation. However we cannot consider this decision since such relief can be given only by the High Court or the Supreme Court and this Tribunal being a creation of statute cannot go beyond the statute."*

In the In the case of Jain Manufacturers vs. CCE, Rajkot [2013(293)ELT 122(Tri-Ahmd.)], the CESTAT, West Zonal Bench, Ahmedabad proclaimed as below;

*"...I find that the refund claim filed by the appellant is hopelessly delayed and Tribunal being a creation of Statute cannot go beyond the provisions of law. Accordingly, taking a view that the refund claim has not been filed within one year from the relevant date as per the provisions of Section 11B, the appeal is rejected."*

Thus, as the appellants had filed the refund claim beyond the time limit prescribed under condition number 26 of serial number 273 of the Notification number 12/2012-CE dated 17.03.2012, I proclaim that they are not eligible for the refund amount of ₹5,56,000/-. In view of the above, I find that the adjudicating authority has rightly rejected the claim as time bar under Section 11B of the Central Excise Act, 1944 and the appellants have considerably failed to defend their arguments with genuine acceptable evidence.

**7.** Therefore, I do not find any reason to interfere in the impugned order and in view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

**8.** In view of the above, I hereby dispose off the appeal as per the discussion held above.



9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 24/10/18

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.

To,  
M/s. Ford India Pvt. Ltd.,  
Survey number 1,  
Village North Kotpura, Tal: Sanand,  
Ahmedabad

**Copy to:-**

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-III, Ahmedabad-North.
4. The Asstt. Commissioner, Central Tax (System), HQ, Ahmedabad-North.
5. Guard file.
6. P.A file.



