



# आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.) : V2(32)237 to 240/North/Appeals/ 2018-19 / 11325 to 11329

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-67 to 70-19-20

दिनांक (Date): 24/06/2019 जारी करने की तारीख (Date of issue): 03/07/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

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

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

Arising out of Order-In-Original No 115 to 118/AC/18-19/Rebate Dated: 23/01/2019

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

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

## M/s Shah Industries

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 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 न्यायाधिकरण 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 पट्टी 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

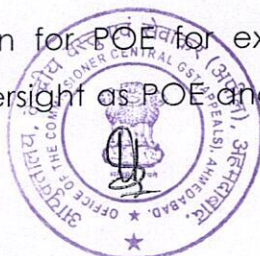
M/s Shah Industries, C-1, 270, GIDC Estate, Phase-I, GIDC, Naroda, Ahmedabad-382330 (hereinafter referred to "the appellant") has filed the following four appeals against Orders-in-Original as detailed below (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST, Division-I (Naroda), Ahmedabad-North (hereinafter referred to as "the adjudicating authority).

Sr. No.	A.R.E. No. 1 and Amount involved	SCN No.	OIO No.	Date of export
1	77/14-15 dt. 25.07.2014 for Rs. 9,31,944/-	V/18-39/18-Rebate dtd. 07.12.2018	115/AC/18-19/Rebate dtd. 23.01.2019	25.07.2014
2	78/14-15 dt. 26.07.2014 For Rs. 6,28,135/-	V/18-40/18-Rebate dtd. 07.12.2018	116/AC/18-19/Rebate dtd. 23.01.2019	28.07.2014
3	81/13-14 dt. 15.10.2013 For Rs. 4,49,409/-	V/18-38/18-Rebate dtd. 07.12.2018	118/AC/18-19/Rebate dtd. 23.01.2019	17.10.2013
4	80/14-15 dt. 30.07.2014 For Rs. 8,38,749/-	V/18-41/18-Rebate dtd. 07.12.2018	117/AC/18-19/Rebate dtd. 23.01.2019	30.07.2014

2. The appellant had filed the above mentioned rebate claims under Rule 18 of Central Excise Rules, 2002 ( for short -CER) read with notification No.19/2004-CE (NT) dated 06.09.2004, on 30.10.2018 along with its relevant documents. On scrutiny, it was noticed that the said claims were filed after expiry of more than three years from the dates of export. Therefore, above mentioned four show cause notices all dated 23.01.2019 were issued to the appellant for rejecting the said claim as time barred under the provisions of Section 11 B of Central Excise Act, 1944 ( for short-CEA) which were later on rejected vide the impugned orders. I take up all the above mentioned appeals together by this single order.

3. Being aggrieved, the appellant has filed the present appeals on the following grounds that:

- The facts of the case are that they had filed rebate claims along with all proper and correct documents in time along with application form "C" on 02.09.2014 and therefore it cannot be said that the rebate claims were not filed within the stipulated time;
- While filing consolidated application for POE for export of goods, the rebate claims were filed through oversight as POE and the deptt. has not





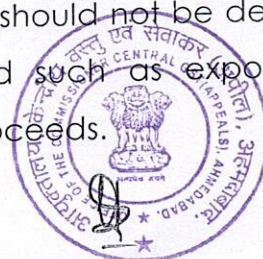
issued any POE with respect to these rebate claims but for other applications, POE were issued;

c) There is no dispute about the export of goods and even there is no dispute that the appellant has not paid duty at the time of clearance of goods. They seek reliance on the case of Mangalore Refinery case decided by the Hon'ble Supreme Court of India.

4. Personal hearing in the matter was held on 22.05.2019 wherein Shri N.K.Oza, consultant appeared, reiterated the grounds of appeal and submitted the copy of acknowledgement of POE.

5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during personal hearing. In the instant case, I observe that the appellant has removed the finished goods vide ARE-1 Nos. as detailed in the above table under Rule 18 of CER and filed rebate claim on 30.10.2016. The adjudicating authority has rejected the rebate claim as time barred, in terms of provisions of Section 11B of CEA.

6. From perusal of the documents, I find that the goods were exported on 25.07.2014 28.07.2014 17.10.2013 and 30.07.2014 respectively and it is the contention of the department that the rebate claims were filed on 30.10.2018. I find that the appellant have contended that they had filed rebate claims along with all proper and correct documents in time along with application form "C" on 02.09.2014 and therefore it cannot be said that the rebate claims were not filed within the stipulated time. They have also submitted a copy of the acknowledgement and on perusal, I find that it contains the documents such as 18 A.R.E No. 1s (duplicate and triplicate) which include the concerned A.R.E. No. 1s, transporter copies of the invoices, photocopy of EP copy of S.B. , N.N. copy of B/L and mate receipts. It also shows that the letter has been received by the department on 02.09.2014. I find that all the necessary documents for the rebate claim had already been with the department from 02.09.2014 except for A.R.E. No. 81/13-14 dt. 15.10.2013 for Rs. 4,49,409/-and it was mistakenly mentioned as "POE". It is further to be noted that prescribed form "C" was filed on 30.10.2018 for all the rebate claims detailed above because of which the rebate claims have been rejected. I hold that all the necessary documents related to the rebate claims had already been filed on 02.09.2014 though with wrong form so I find that substantive benefit should not be denied when all the necessary requirements have been fulfilled such as export of goods and payment of duty and realisation of export proceeds.





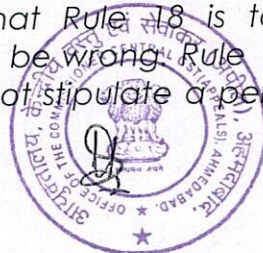
7. I further find that the chapter 9 of the CBEC's Excise Manual of Supplementary Instructions -2005 deals with the issue of refund and rebate and refund includes rebate paid on goods exported out of India or on materials used in the manufacture of goods exported out of India. Instructions at para 3.1 and 3.2 clearly lay down that the department has to scrutinise the rebate claims within 2 weeks from the date of receipt of the claim and in case of any deficiency, the same should be pointed out to the applicant within 15 days of receipt. On perusal of the case records and show cause notices, it is noticed that the claims were filed on 02.09.2014 and show cause notices were issued on 07.12.2018 i.e. after a lapse of more than four years. It is a very serious lapse and in violation of the supplementary instructions. It is very important that the whole issue has been handled in a very casual manner and in complete disregard to the provisions and procedures related to the rebate claims. It is also significant that the interest liability also arises on the rebate claims in case there is delay beyond the specified time limit.

8. I find support from the case law of DY. COMMISSIONER OF C. EX., CHENNAI Vs. DORCAS MARKET MAKERS PVT. LTD. cited at 2015 (321) E.L.T. 45 (Mad.) and I quote the relevant part of the decision as below:

**"13.** Therefore, one may tend to think that even a claim for rebate may have to be filed within one year from the relevant date, by virtue of sub-section (1) read with Explanation (B) for the expression "relevant date" under sub-section (5). But, the paradox is that the question of rebate of duty is governed separately by Section 12 and the entitlement to rebate would arise only out of a notification under Section 12(1). The definition of the expression "relevant date" under sub-section (5) of Section 11B does not take care of this contingency.

**14.** There is yet another paradox. As we have pointed out earlier, sub-section (3) of Section 11B contains a non obstante clause which excludes any judgment, decree or order of any Court or Tribunal. But, the definition of the expression "relevant date" under Clause (B)(ec) of the explanation under sub-section (5) of Section 11B includes within its purview the date of judgment, decree or order, in cases where the duty becomes refundable as a consequence of any judgment, decree or order. This is perhaps the reason why the non obstante clause contained in sub-section (3) is specifically made applicable only to the power of the Assistant Commissioner to order refund under sub-section (2). It is not made applicable to sub-section (1) of Section 11B which stipulates the period of one year for filing a claim.

**15.** Therefore, we are of the considered opinion that the view taken by the learned Judge that Rule 18 is to be construed independently, cannot be said to be wrong. Rule 18 of the Central Excise Rules, 2002, by itself does not stipulate a period of limitation.





V2(32)237/North/Appeals/2018-19  
 V2(32)238/North/Appeals/2018-19  
 V2(32)240/North/Appeals/2018-19  
 V2(32)239/North/Appeals/2018-19

Rule 18 reads as follows :-

**"Rule 18. Rebate of duty.** - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

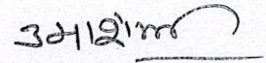
Explanation. - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

16. As rightly pointed out by the learned Judge, the rebate of duty under Rule 18 should be as per the notification issued by the Central Government. The Notification bearing No. 19/2004, dated 6-9-2004 prescribes the conditions, limitations and procedures for considering the claim for refund. Under Clause 2(d) of the notification, the rebate claim may be allowed from such place of export and such date, as may be specified by the Board, by filing electronic declaration. This Notification dated 6-9-2004 superseded the previous Notification bearing No. 41/1994, dated 12-9-1994. At the time when the 1994 notification was issued, the procedure for filing electronic declaration had not been made. Since everything was made manually at that time, the notification of the year 1994 prescribed a time-limit for filing claim. But, the 2004 notification did not contain the prescription regarding limitation. This was a conscious decision taken by the Central Government and hence, the view taken by the learned Judge is fair and reasonable."

Further I find that this case has been upheld by the Hon'ble Supreme Court as cited at 2015 (325) E.L.T. A104 (S.C.). In view of this settled legal position, I find that the appeals filed by the appellant succeed. The impugned orders are set aside.

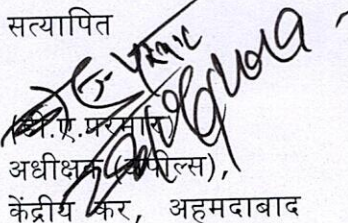
9. The appeals filed by the appellant stand disposed of in above terms.

अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।



(उमा शंकर)  
 प्रधान आयुक्त (अपील्स)  
 केंद्रीय कर, अहमदाबाद  
 दिनांक: . . .2019

सत्यापित

  
 (डी.ए. प्रसाद)  
 अधीक्षक (अपील्स),  
 केंद्रीय कर, अहमदाबाद





By RPAD.

To,

M/s Shah Industries,  
C-1, 270, GIDC Estate,  
Phase-I,  
GIDC, Naroda,  
Ahmedabad-382330

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad- North,
3. The Asstt. Commissioner, System, Central Tax, Ahmedabad- North
4. The Asstt. Commissioner, CGST, Division-I, Ahmedabad-North
- ✓ 5. Guard File.
6. P.A.

