



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.

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क फाइल संख्या : File No : **V2(CEX)109/North/Appeals/2019-20/14612 TO 14616**

ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-002-APP-003-20-21**

दिनांक Date : 21.04.2020 जारी करने की तारीख Date of Issue : **05/06/2020**

श्री **अखिलेश कुमार**, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: **V.65/18-89/REF/II/19-20**, Date: **13/12/2019** Issued by: **Assistant Commissioner**, CGST, Div: V, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Atlantis Products 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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of 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 हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध 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- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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

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 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 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 1970 यथा संशोधित की अनुसूचि-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 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 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, 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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



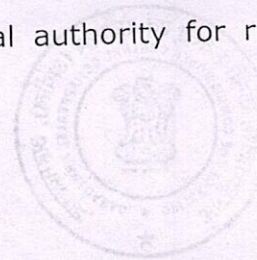
ORDER-IN-APPEAL

This appeal has been filed by M/s Atlantis Products Pvt Ltd., 1205-1210, GIDC, Dholka, Dist. Ahmedabad (Gujarat) [hereinafter referred to as "appellant"] against letter F No.V.65/18-19/Ref/I/2019-20 dated 13.12.2019 issued by the Assistant Commissioner of GST & CE, Division-V, Ahmedabad North [hereinafter referred to as "AC-CGST"].

2 Facts of the case, in brief, are that the appellant had allegedly filed 13 refund claims before the Deputy/Assistant Commissioner of Central Excise, Division-II and Division-IV of erstwhile Ahmedabad II Central Excise Commissionerate between 25.11.2013 and 16.01.2017 seeking refund of an amount of Rs.11,23,991/- on account of service taken for export of goods manufactured by them. The appellant have claimed that they had filed refund claims for the period in question on regular intervals but refund was not granted by the department. Later, they got stuck in implementation of GST and in 2018 it had made application before jurisdictional officer for granting refund. However, since no communication in respect of the said 13 refund claims was received by the appellant till 2019 from the Department, they took up the matter with AC-CGST (who is the present jurisdictional authority after CGST bifurcation) to sanction/dispose their claim, vide letter dated 30.09.2019. The Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate has reported to the AC-CGST that no such claims were received by their office during the material periods. On the basis of the said report, the AC-CGST has rejected appellant's request to sanction/dispose the refund claim, vide letter dated 13.12.2019 supra.

3. Aggrieved with the letter F. No. V.65/18-19/Ref/I/2019-20 dated 13.12.2019, the appellant has filed the instant appeal on the grounds that:

- They were regularly filed the refund application against export of goods from 2010-11 onwards, however, the refund claims filed from 2013-14 to 2015-16 were not granted to them by the Department.
- After filing of refund claim for the period from 2013-14, they were stuck up in the implementation of GST works which came w.e.f July 2017; that in 2018, they made reference to grant the refund in question, but the Department has not sanctioned due to non-availability of Data/refund application made by them.
- The appellant has made genuine refund claim which were not available with the department and accordingly, the department has rejected their claim vide letter dated 13.12.2019, which is not correct.
- They have furnished copies of relevant applications filed before the concerned authority with the present jurisdictional authority for reference and sanction of refund.



4. Personal Hearing in the matter was held on 23.03.2020. Shri Ankit Parikh, Chartered Accountant, appeared for the hearing and re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum. The limited point to be decided in the instant case is whether 13 refund claims filed by the appellant during period 2013-14 to December 2016 before the Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate are genuine or not and whether the adjudicating authority has correctly rejected the said claims due to non-availability of records with the Department.

6. I find from the records that the 13 refund claims in question were said to be filed by the appellant from 25.11.2013 to 16.01.2017 with the Deputy/Assistant Commissioner of Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate. The appellant has furnished copy of refund applications, having receipt seal of jurisdictional authority, as proof of filing of the said refund claims. The AC-CGST has rejected the said refunds claims by stating that:

"It is already informed by this office that erstwhile division III and division IV of this Commissionerate, where subject claims are said to have been filed by you have checked their relevant records and informed this office that no such claims are received in their office during material period.

Your representatives have visited this office in connection with above matter but no further communication of any sort in connection with above subject 13 refund claims either from your side (in the form of reminder letters) or from department side (in form of query letter, SCN, rejection order etc) is produced, No logical and acceptable reason for no action for a such long period of three to six years in this very sensitive matter of "REFUND" on the part of both the sides simultaneously is difficult to understand. Such things do not occur in the matter of REFUND.

Claimant of refund writes reminder letters if refund amount is not sanctioned and amount not received by them in time. The provisions of Section 11BB regarding interest for delayed refund keeps department on guard.

In view of the above, something appears wrong at your end. And no action lies with this office and your application is rejected."

7. On perusal of the above rejection letter of refund claims in question, I observe that though the AC-CGST has raised the point of genuineness of the refund claims filed by the appellant before the erstwhile jurisdictional authority, the matter was not further looked into by him to verify the authenticity of the such claim in details.

8. The appellant has clarified in their submission that they could not follow up the refund matter further as they were stuck up in the implementation of GST works which came w.e.f July 2017 and in the year 2018 only, they can made reference to grant the refund in question with the new jurisdictional authority i.e AC-CGST for sanctioning the refund claims in question. These contentions of the appellant are not convincing and lack evidence as well as genuineness. I find that the appellant had claimed to have filed the refund claims in question in the month



of November 2013, August 2014, December 2014, March 2015, July 2015, September, 2015, January 2016, July 2017, and January 2017. The GST has been introduced with effect from July 2017. It is surprising that when the appellant files periodical refund claims in an identical issue with the Department from 2013 to 2016, how the status of claim pending with the Department be unattended or missed out to make necessary enquiry with Department by them. In the instant case, the appellant has taken up the matter after a lapse of three to six years period that too with the new jurisdictional authority only. It is a fact that the appellant has furnished copy of refund claims showing office zeal of Division-III and Division-IV of erstwhile Ahmedabad-II Commissioneate as a proof of filing of 13 claims in question. On perusal of the same, it is observed that the receipt number of the claim is blank in the office seal and no signature of receiving officer is available in their office copy. These observations put force in the contention of the AC-CGST for rejecting the claims as per grounds mentioned at para 1 of the letter cited supra. Further, I find that except the proof of filing of the claims without proper entry number allotted by the department, the appellant has not able to furnish any supporting documents viz. Books of Accounts etc, which shows that the amount in question pending with the Department is receivable by them during 2013-14 to 2016-17.

9. It is also observed in the instant case that while rejecting the claims no natural justice was granted by the AC-CGST to the appellant, which is essential before deciding a case. The order passed by the AC-CGST, vide letter dated 13.12.2019 is also not a speaking order.

10. Under the above discussed facts and circumstances, the adjudicating authority should verify the genuineness of the 13 refund claims filed by the appellant with the erstwhile Division-III and Division-IV of Ahmedabad-II Commissioneate with the documents/records maintained by the Department and procedure thereof adopted by the Divisional Office while receiving the refund claims in general. Enquiry with the concerned Divisions as well as with the appellant may also be conducted in this regard, if necessary. If the claims filed by the appellant are found in genuine, necessary action may be taken for its disposal.

11. In view of above discussion, I remand the case to the AC-CGST. Necessary opportunity for natural justice may be given to the appellant before deciding the case. The appeal stands disposed of in above terms.

Akhilesh Kumar
Akhilesh Kumar
Commissioner (Appeals)
/04/2020



Attested

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

To,

M/s Atlantis Products Pvt Ltd.,
1205-1210, GIDC, Dholka,
Dist. Ahmedabad (Gujarat)

Copy To:-

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



