



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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स्पीड पोस्ट

क फाइल संख्या : File No : File No : V2/(24) 147 & 164/AHD-II/2013

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-052 to 053/2020-21**
दिनांक Date : **24.02.2021** जारी करने की तारीख Date of Issue : **02.03.2021**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **20/DCD/2013** dated **31.07.2013**, passed by Deputy Commissioner, erstwhile Central Excise, Div. -IV, Ahmedabad-II Commissionerate and now CGST & Central excise, Divi-IV, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- (i) M/s Urmin Products Pvt. Ltd.. (ii) M/s Champion Flavours

Respondent- Deputy Commissioner, erstwhile Central Excise, Div. -IV, Ahmedabad-II Commissionerate and now CGST & Central excise, Divi-IV, Ahmedabad-North

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 दिनोंक 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) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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

The present appeals have been filed by (i) M/s. Urmin Products Pvt. Ltd., 48, Changodar Industrial Estate, Changodar, Ahmedabad- 382 213 [*hereinafter referred to as the 'appellant-1'*] and (ii) M/s Champion Flavours, 183-B, SICOP Industrial Area, Kathua (J&K) having present Correspondence Address as 300, Souty Soti Gunj, Behid Gurudwara, Meerut- 250001 U.P. [*hereinafter referred to as the 'appellant-2'*], against Order-In-Original No. 20/DC/D/2013 dated 31.07.2013 (hereinafter referred as "*impugned order*") passed by the Deputy Commissioner, erstwhile Central Excise, Division-IV, Ahmedabad-II Commissionerate and now CGST & Central Excise, Division-IV, Ahmedabad North (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the matter, in brief, are that the appellant-1 is engaged in the manufacture and clearance of Flavored Chewing Tobacco falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985, and having Central Excise Registration No. AAACU4489QXM001. During the course of investigation by the officer of Central Excise Commissionerate, J & K, Jammu against M/s Champion Flavours, 183-B, SICOP Industrial Area, Kathua (J&K), it was found that the said unit have actually not manufactured the said goods but have fraudulently shown production and clearance of Menthol Crystal(hereinafter referred to as "the said goods") and mis-used the provision of Notification No. 56/2002-CE dated 14.11.2002. Accordingly, a Show Cause Notice bearing F. No. V(33) 89/HQ/Adj/ADC/CCE/J&K/CE/2012 dated 24.09.2012 issued by the Additional Commissioner of Central Excise, J & K to appellant-2.

2.1. On the basis of SCN issued by the Additional Commissioner of Central Excise, J & K to M/s Champion Flavours, the Deputy Commissioner of Central Excise, Division-IV, Ahmedabad-II Commissionerate issued Show Cause Notice F.No. V.24/3-97/D/2012 dated 23.10.2012 to appellant-1 for denying cenvat credit/recovery of cenvat credit taken amounting to Rs.2,30,892/- on the basis of invoices issued by the appellant-2 along with Interest under the provision of Rule 14 of Cenvat Credit Rules-2004 read with erstwhile proviso to Section 11A(1), now Section 11A(5) of the Central Excise Act,1944. It was also proposed for imposition of penalty under the provision of Rule 15(2) of Cenvat Credit Rules-2004 read with Section 11AC of the Central Excise Act,1944. In the said show cause notice personal penalty under Rule 26(2) of Central Excise Rules, 2002 was also proposed on the appellant-2.



2.2. The said show cause notice was adjudicated by the Adjudicating authority vide impugned order wherein he confirmed the demand amounting to Rs.2,30,892/- alongwith Interest and imposed penalty of Rs.2,30,892/- under Rule 15(2) of CCR,2004 readwith Section 11AC of the Central Excise Act,1944 on the appellant-1. He also imposed penalty of Rs.2,30,892/- on appellant-2 under Rule 26(2) of the Central Excise Rules, 2002.

3.1 Being aggrieved with the impugned order, the appellant-1 have filed appeal on the grounds that:

- Impugned order passed in utter violation of the principles of natural justices, as the adjudicating authority has failed to consider the submission made by them;
- That the extended period is not invocable for recovery of cenvat credit taken on the basis of duty paying documents and duly received goods and they rely upon the decision of Hon'ble High Court of Gujarat in the case of Prayagraj Dyeing and Printing Mills P.Ltd & Others;
- That the adjudicating authority failed to establish which facts were suppressed by them;
- That they received the goods and used by them and had taken cenvat credit of the amount of duty paid by the manufacturer on a valid duty paying documents as per Rule 3 of the Cenvat Credit Rules and there is no prohibition under the said rule for deny the cenvat credit;
- That they rely upon the decisions of the Hon'ble Tribunal in the case of SRF Ltd Vs CCE reported at 2000 (124) ELT 448 (New Delhi-CEGAT); Haryana Vidyut Prasaran Nigam Ltd Vs CCE 2004 (166) ELT 53 (New Delhi-CEGAT); Commissioner of Central Excise, Jaipur Vs Ashol Leyland Ltd 2001 (127) ELT 804 (Tri. Del); Bhuwalka Steel Industries Ltd Vs Commissioner of Central Excise, Thane-I 2007 (212) ELT 63 (Tri. Mumbai); Tata Engg & Locomotive Co. Ltd Vs CCE 2006 (205) ELT 1045 (Mumbai CESTAT);
- That they also relied upon the judgement of M/s Havell India Ltd 2011 (271) ELT 582(Tri., Delhi) and M/s Krishna Metal Corporation 2010 (262) ELT 337 (Tri. Ahmd) for imposition of penalty.

3.2 Being aggrieved with the impugned order, the appellant-2 has also filed appeal on the grounds that:

- That the impugned order passed in utter violation of the principles of natural justices, as the adjudicating authority has failed to consider the submission made by them;
- That the impugned order are based on no evidence and assumption as the proceeding is based on the allegations made vide SCN dated 24.09.2012 which cannot be said to have been proved until all the legal remedies available under the law have been exhausted ;
- That their unit has been audited by the departmental officer and hence the goods were received by the manufacturing unit/buyer under proper duty paying documents;
- That the impugned order having been passed without any evidence on record is highly arbitrary, perverse and illegal and deserve to be quashed and set aside;
- That the charge of issuing an invoice without delivery of goods have not been proved against them and hence penalty under Rules 26(2) of the Central Excise Rules, 2002 can not be imposed.
- They relied upon various judgement of Hon'ble Tribunal in case of Syed Shaukath Ali Vs Commissioner 2007 (219) ELT 256 (Tri. Bang.), Liladhar Pasoo Forwarders P.Ltd Vs Commissioner of Customs, Mumbai 2000 (122) ELT 737 (T), Karnataka Mineral & Mfg Co., Ltd Vs Collector of Central Excise 1989 (41) ELT 444 (T)etc.

4. The present appeals were transferred to Call Book as the present issue was a fall out of the SCN issued against Champion Flavours by the CCE, Jammu which had not been decided. The matter was taken up with the jurisdictional CGST, Jammu



Commissionerate. They vide letter ADJ1-ADJOCE/179/2019-HQ-GST-LMU/9584 dated 18.05.2020 informed that the matter was decided by the Commissioner, Central Excise, Chandigarh-II vide OIO No. 36-40/CE/CHD-II/2016 dated 06.05.2016 and forwarded a copy of the said order. Accordingly, present appeals were retrieved from Call Book and proceedings on the same were taken for adjudication.

5.1. Personal hearing in the matter was held on 21.01.2021 through virtual mode. Shri N.K. Tiwari, Consultant appeared on behalf of appellant-1 for the hearing. He reiterated the submission made in appeal memorandum and further stated that he would submit additional written submission containing, inter-alia, the usage of products in their factory premises.

5.1.1. The Appellant-1 vide their further submission stated that it is not the case of the department that the said input i.e Menthol Crystals were not received by them and also the said input was not put to use by them in the manufacture of the final products. Further stated that the adjudicating authority relied upon the SCN dated 24.09.2012 issued to appellant-2 and four other noticees. The said SCN was not issued to them. The cases laws relied upon by the adjudicating authority were not applicable in the instant case.

5.2. Personal hearing in the matter was also held on 29.01.2021 through virtual mode. Shri Saurabh, Authorized person appeared on behalf of appellant-2 for the hearing. He reiterated the submission made in appeal memorandum. He stated that the SCN issue from Jammu Commissionerate has been decided in their favour by the CESTAT and requested to drop the proceedings.

5.2.1. The appellant-2 vide their letter dated 25.01.2021 submitted further written submission and stated that the SCN dated 24.09.2012 was adjudicated vide OIO No. 36-40/CE/CHD-II/2016 dated 06.05.2016 by Commissioner, Chandigarh-II and the same was contested by them before Hon'ble CESTAT, Chandigarh and submitted copy of Final Order No. A/60880/2019-EX(DB) dated 22.10.2019 wherein the Tribunal allowed appeal filed by them. He also stated that the present proceeding is aftermath of above demand which has already been set aside, so present demand and penalty is also not sustainable. The Hon'ble CESTAT, Chandigarh vide order dated 22.10.2019 held as under:

7. *As the issue has already been settled that Revenue has failed to establish that there was no manufacturing activity and we also take a note of the fact that Jammu Commissionerate has frequently visited the factory premises and found manufacturing the goods going in their own. In that circumstances, the allegation*



made in the impugned order are not sustainable against the appellant. Consequently, the impugned order deserves no merit, hence, the same is set-aside.

8. *In result, the appeal is allowed.*

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as additional submission made at the time of personal hearing. It is observed that the issue involves in the instant appeal whether the CENVAT Credit taken by appellant-1, on the basis of invoices issued by appellant-2, who have allegedly not manufactured the goods and have fraudulently shown production and clearance of the goods without physical receipt of goods and issued the duty paid documents is required to be recovered under Rule 15(2) of CCR,2004 readwith Section 11AC of the Central Excise Act,1944 or otherwise. Further, whether the penalty imposed on appellant-2 under Rule 26(2) of the Central Excise Rules, 2002 is legally sustainable.

7. It is observed that the SCN in the case has been issued based on proceedings initiated against the appellant-2 by erstwhile Jammu and Kashmir, Central Excise Commissionerate which alleged that appellant-2 had supplied only cenvatable invoices without actual supply of goods in question. Hence, CENVAT credit availed by appellant-1 was irregular. It was only on this basis demand was confirmed vide the impugned order by adjudicating authority.

7.1. The appellant have contested demand and stated that the goods were supplied by appellant-2 and received in premises of appellant-1.

8. It is observed that the appellant-2 vide their further written submission dated 25.01.2021 contended that the Hon'ble CESTAT, Chandigarh vide Final Order No. A/60880/2019-EX(DB) dated 22.10.2019 allowed appeal filed by them and hence the present proceeding which is aftermath of above demand which has already been set aside, so present demand and penalty is also not sustainable. The Hon'ble CESTAT, Chandigarh vide their order dated 22.10.2019 decided the appeal of appellant-2 against the OIO dated 06.05.2016 passed by Commissioner, Central Excise, Chandigarh-II where in it is held that:

7. As the issue has already been settled that Revenue has failed to establish that there was no manufacturing activity and we also take a note of the fact that Jammu Commissionerate has frequently visited the factory premises and found manufacturing the goods going in their own. In that circumstances, the allegation made in the impugned order are not sustainable against the appellant. Consequently, the impugned order deserves no merit, hence, the same is set-aside.

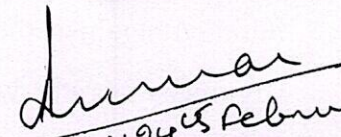
8. *In result, the appeal is allowed.*



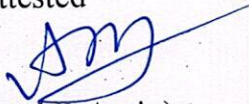
9. Looking into the facts and circumstances of the instant case and by following the decision of the Hon'ble CESTAT, Chandigarh referred to above, I find that the appellant-2 had manufactured and cleared Menthol Crystals to various parties including appellant-1 on payment of appropriate central excise under valid duty paying documents. The department has not submitted any evidence to contradict this. Accordingly, the appellant-1 has correctly availed the cenvat credit on the basis of invoices issued by appellant-2. Thus, I find that the impugned order with respect to confirmation of demand of Central Excise duty amounting to Rs.2,30,892/- along with interest and penalty imposed on both appellants are legally not sustainable.

10. In view of facts discussed above, I set aside the impugned order and allow the appeal filed by both the appellants.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by both the appellants stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
Dated : . 02.2021

Attested


(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D

To

1. M/s. Urmin Products Pvt. Ltd.,
48, Changodar Industrial Estate,
Changodar, Ahmedabad- 382 213
2. M/s Champion Flavours,,
300, Souty Soti Gunj,
Behid Gurudwara,
Meerut- 250001 U.P.

Copy to:

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