



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 : GAPPL/COM/CEXP/49/2020-Appeal-O/o COMMR-CGST-APPL-AHMEDABAD

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-56/2020-21  
दिनांक Date : 17.03.2021 जारी करने की तारीख Date of Issue : 22.03.2021

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

ग Arising out of Order-in-Original Nos. GST/D-VI/O&A/05/Titan/AC/AMP/2019-20 dated  
13.06.2019, passed by Assistant Commissioner, Central GST & Central Excise, Div.-VI  
Ahmedabad-North

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

**Appellant-** - M/s Titan Company Limited.

**Respondent-** Assistant Commissioner, Central GST & Central Excise, Div.-VI 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, संसाद 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, 4<sup>th</sup> 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 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-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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 यथार्थिती 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 यथार्थिती 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 रूपए 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**

This appeal has been filed by M/s. Titan Company Limited, (having registered office at "Integrity" No. 193, Veerasandra, Electronic City, P.O. Off Hosur Main Road, Bengaluru- 560 100) (henceforth referred as "*appellant*") for M/s Titan Eye+ show room at 21, 25, 26, Amrapali Shopping Centre, Near Havmore Restaurant, S.P.Ring Road, Bopal, Ahmedabad-380058 against the Order-In-Original No. GST/D-VI/O&A/05/Titan/AC/AMP/2019-20 dated 13.06.2019 (henceforth referred as "*impugned order*") issued by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-North (henceforth referred as "*adjudicating authority*"). The appellant owns M/s. Titan Eye+ (company owned as well as franchisee).

2.1. Briefly stated, the facts of the case are that the M/s Titan Eye+, Showrooms, company owned as well as franchisee are engaged in the manufacture and clearance of Titan Brand Spectacles which attract central excise duty @ 1% (without Cenvat Credit) vide Notification No.01/2011-CX dated 01.03.2011 and 5% (with Cenvat Credit) vide Notification No.02/2011-CX dated 01.03.2011. The rates of 1% and 5% were raised to 2% and 6% vide Notification No. 16/2012-CX dated 17.03.2012 and Notification No. 19/2012-CX dated 17.03.2012, respectively. None of the Titan Eye+ showrooms obtained the central excise registration for the spectacles manufactured and cleared by them. Accordingly, the Additional Director General, DGCEI, Delhi issued Show Cause Notices (henceforth referred as "*SCN*") to all Titan Eye+ showrooms including the present appellant vide F.No.DZU/INV/F/CE/351/2015/2736 dated 23.03.2016 proposing demand of Rs.1,28,386/- for the period from 01.04.2013 to 31.08.2015.

2.2. Thereafter, the Range Superintendent, called for the month-wise details like manufactured quantity and clearance value of spectacles during the period from 01.04.2016 to 30.06.2017 from the appellant and issued the SCN dated 21.03.2018 proposing demand of duty amounting to Rs.68,162/- under Section 11A of Central Excise Act, 1944 alongwith interest and also proposed imposition of penalty under Section 11AC of Central Excise Act, 1944. The said SCN was decided by the adjudicating authority vide impugned order confirming the duty alongwith interest and also imposed penalty on the appellant.



3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the grounds that:

- That the adjudication authority has proceeded and passed impugned order without following the established practice in the matter of adjudication;
- That the same issue raised in the SCN dated 23.03.2016, relating to the earlier period, is still pending being part of Writ Petition No. 37765/2016 before the Hon'ble High Court of Madras and the present SCN is pertaining to the subsequent period only;
- That the adjudicating authority failed to follow the principles of natural justice in the matter of providing opportunity of hearing to appellant;
- That they relied upon various judgement in support of their defense that the activity carried out by them does not amount to manufacture under Section 2(f) of Central Excise Act, 1944;
- That since the present SCN is issued on the basis of previous SCN, the facts are in the knowledge of the department and hence there could not be any suppression with an intent to evade duty and therefore the mandatory penalty imposed by the adjudication authority is totally devoid of merit.

4. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Hemant Kumar, Manager Indirect Taxation of the appellant appeared for hearing. He re-iterated the submissions made in Appeal Memorandum. He further stated that the adjudicating authority has not granted any hearing to them before adjudication of the case and requested to remand the matter back to adjudicating authority.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as during the course of personal hearing.

5.1. It is observed that the appellant has contended that the impugned order was passed without following the principles of natural justice in as much as the order was passed without any written submission and without granting opportunities for hearing.

5.2. It is observed that the demand in the impugned order pertains to the SCN dated 21.03.2018 for the subsequent period from 01.04.2016 to 30.06.2017 based on the first SCN dated 23.03.2016 issued by the Additional Director General, DGCEI, Delhi. The said SCN dated 21.03.2018 has been decided by the adjudication authority vide impugned order for which the appellant has contended that [i] the issue raised in first



SCN dated 23.03.2016 relating to the earlier period 01.04.2013 to 31.08.2015 is still pending being part of Writ Petition No. 37765/2016 and 32365/2016 pending before the Hon'ble High Court of Madras & thereby failed to follow principles of natural justice; [ii] personal hearing was not granted by the adjudicating authority.

6. It is observed from the case records that the appellant has filed Writ Petition No. 37765/2016 and 32365/2016 against initial SCN dated 23.03.2016 with the Hon'ble High Court of Madras who vide their interim order dated 01.11.2016 directed the Commissioner of Central Excise, Chennai, not to initiate any coercive action against the petitioner till the issue is decided by the court. It is observed that the final outcome of the case before Hon'ble Madras High Court is still pending. Further, I find that the adjudicating authority has not followed the direction given by the Hon'ble High Court of Madras and decided the SCN dated 21.03.2018 vide impugned order. Further, he has also not followed the principles of natural justice by deciding the matter without giving any opportunity to the appellant to defend their case. Hence, I find that the impugned order has been passed without following principles of natural justice.

7. The first ground taken is that the adjudicating authority, in the case did not adhere to the principles of natural justice. The adjudication proceedings should be conducted by observing principles of natural justice. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Time and again it has been held by various courts that failure to adhere to the principles of natural justice vitiates the order. In the instant case, no personal hearing was given before deciding the refund claim. The impugned OIO fails on this count and therefore needs to be set aside.

8. In view of the above observations, I find that the adjudicating authority in the present matter has adjudicated an SCN, where the earlier SCN is still pending for decision before the Hon'ble Madras High Court. The adjudicating authority has also not given proper opportunity to the appellant and thereby not followed principle of natural justice. Therefore, I find that the subsequent SCN cannot be adjudicated till the final outcome of writ petition before the Hon'ble Madras High Court. Further, the act of adjudicating authority by deciding the SCN without giving personal hearing is



violative of principles of natural justice. Hence, I set aside the impugned order and remand back the matter to the adjudicating authority to decide the case after accordingly the appellant the opportunity to represent their case.

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

*Akhil*  
..17/03/2021..  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Ahmedabad  
17/03/2021

Attested

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

By R.P.A.D

To

M/s. Titan Company Limited,  
"Integrity" No. 193, Veerasandra,  
Electronic City, P.O. Off Hosur Main Road,  
Bengaluru- 560 100

Copy to:

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



