



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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**DIN-20210364SW000094929F**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/75/2020-Appeal-O/o COMMR-CGST-APPL-AHMEDABAD

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-57/2020-21**  
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. **02/AC/Dem/2020-21/KKS** dated **30.06.2020**, passed by Assistant Commissioner, Central GST & Central Excise, Div.-V Ahmedabad-North.

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

**Appellant-** - M/s Bhagwati Autocast Limited.

**Respondent-** Assistant Commissioner, Central GST & Central Excise, Div.-V 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, 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, अपीलों 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 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.



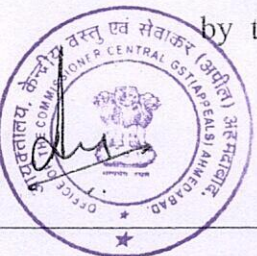
**ORDER IN APPEAL**

This appeal has been filed by M/s. Bhagwati Autocast Limited, Bavla-Sanand Road, Bavla, District-Ahmedabad (henceforth referred as "*appellant*") against the Order-In-Original No. 02/AC/Dem/2020-21/KKS dated 30.06.2020 (henceforth referred as "*impugned order*") passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad-North (henceforth, "*adjudicating authority*").

2.1. Briefly stated, the facts of the case are that the appellant is engaged in the manufacturing of C.I. and S.G.I Casting falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAACB4699KXM001. During the course of audit, it was observed that the cost of component of moulds and dyes that was collected from the customers but was not included in the assessable value of the final product of the appellant and the audit had detected the cost for moulds and dyes recovered from the customers amounting to Rs.21,16,013/- from the balance sheet for the years 2001-2002 to 2003-2004 as "Pattern Sales Income". Accordingly, a Show Cause Notice dated 25.07.2005 was issued to the appellant demanding duty amounting to Rs.3,38,562/- for the period from F.Y. 2001-2002 to 2003-2004 invoking extended period, alongwith Interest and Penalty. The said SCN was decided by the adjudicating authority vide Order-In-Original No. 14/D/2006 dated 10.03.2006 confirming the duty alongwith interest and also imposed penalty on the appellant.

2.2. Being aggrieved, the appellant filed an appeal against OIO No. 14/D/2006 dated 10.03.2006 before the Commissioner (Appeal), Central Excise, Ahmedabad and the same was decided vide Order-In-Appeal No. 208/2006(Ahd-II)CE/Raju/Commr(A) dated 30.06.2006 wherein he rejected the appeal filed by appellant and upheld the OIO.

2.3. Being aggrieved, appellant preferred an appeal against OIA No. 208/2006(Ahd-II) CE/Raju/Commr(A) dated 30.06.2006 with Hon'ble Tribunal, Ahmedabad and Hon'ble CESTAT, WZB, Ahmedabad vide Order No. A/1244/WZB/AHD/2011 dated 22.06.2011/05.07.2011 decided the appeal and held that the patterns/mould were manufactured by the other manufacturers and the appellant has only paid for the charges on behalf of the their clients/buyers and subsequently, the cost was reimbursed by their buyers and as such, raising of demands on the value of patterns, is not



justified; that the value of such moulds and dies is required to be added in the assessable value of the final product on pro-rata basis; that it is also not very clear as to whether the demand stands raised and confirmed on the total value of the patterns or by adding the cost of the same in the final product on pro-rata basis and accordingly, Hon'ble Tribunal remanded the matter to the adjudicating authority to verify the facts of inclusion of cost of dies and moulds in the final product of the appellant on pro rata basis and also to decide the issue of limitation by taking into account the overall facts.

2.4. Further to the initial SCN, two more Show Cause Notices were issued on similar grounds for the subsequent periods F.Y. 2004-05 and F.Y. 2005-06 ('the subsequent SCN) in line with the proceedings in the matter of the initial SCN, the demands alongwith interest and penalties pertaining the subsequent SCNs were also confirmed by the adjudicating authority and upheld by the Commissioner (Appeals) vide OIA No. 80 and 81/2007 (Ahd-II) CE/Raju/Commr(A) dated 17.07.2007 ('hereinafter the subsequent OIA'). The appellant filed an appeal before the Hon'ble Tribunal against subsequent OIA and Hon'ble CESTAT, Ahmedabad vide Order No. A/11141-11142/2015 dated 30.07.2015 decided the appeal and set aside the demand of duty alongwith interest and penalty for the extended period as upheld in the subsequent OIA and remanded the case back to the adjudicating authority to quantify the demand of duty for the normal period. The adjudicating authority vide OIO No. 25/AC/D/BJM/2016 dated 20.12.2016 again confirmed the demand for which the appellant preferred an appeal with Commissioner (Appeals), Ahmedabad. The Commissioner (Appeals), Ahmedabad decided the appeal vide OIA No. AHM-EXCUSE-002-APP-154-17-18 dated 27.10.2017 remanded back the case to the adjudicating authority to pass a reasoned order discussing the quantification on pro rata basis.

3. As per the Hon'ble CESTAT, Ahmedabad's Order NO. A/1244/WZB/AHD/2011 dated 22.06.2011/05.07.2011, the adjudicating authority, vide impugned order confirmed the demand of Rs. 3,38,562/- alongwith interest under Section 11A of the Central Excise Act, 1944 and imposed penalty of Rs. 3,38,562/- under the provisions of Rule 25 of the Central Excise Rule 2002 read with Section 11AC(1)(c) of the Central Excise Act, 1944.

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



- That the adjudication authority has given one personal hearing on 17.06.2020 and have not followed the principles of natural justice;
- That due to global pandemic of coronavirus and lockdown, their unit was not fully functioning and they had not received such notice of hearing in time and not given further hearing;
- That the contention of the adjudicating authority that the appellant were granted ample opportunities of personal hearing in the past but it was mandatory for the present adjudicating authority to grant opportunity of personal hearing for three times whereas the present the adjudicating authority has given only one hearing and passed the impugned order which is in violation of principles of natural justice and deserves to be set aside in the interest of justice;
- That the demand of duty cannot be confirmed on the entire value of the patterns/mould/dyes sold during the relevant period because, moulds are admittedly not manufactured by the appellant;
- That at the time of purchase of patterns/mould/dyes, they have not taken any cenvat credit;
- That the adjudicating authority has not followed the direction of the Hon'ble Tribunal vide order dated 22.06.2011
- The adjudicating authority could not have confirmed the demand by invoking extended period of limitation.

5.1. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Aditya R Tripathi, Advocate, appeared on behalf of the appellant for hearing. He re-iterated the submissions made in Appeal Memorandum. He further stated that he would submit case laws in support of his contention by way of additional written submission.

5.2. The appellant submitted additional written submission wherein they referred to various case laws decided in the matter viz. M/s Bhagwati Spherocast Pvt. Ltd Vs Commr of C.Ex, Ahmedabad-II [2019 (368) E.L.T. 308 (Guj) and M/s Hindalco Industries Ltd Vs Commissioner of C.Ex, Allahabad [2003 ( 161) E.L.T. 346 (tri. Del.).

6. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as those made in the additional submission. It is observed that the issue to be decided in the matter is as to whether the cost of component of moulds and dies that was collected from the customers is



required to be included in the assessable value of the final product of the appellant or otherwise?

7.1. It is observed from case records and appeal memorandum that the present adjudicating authority granted only one hearing on 17.06.2020 and passed the impugned order which is in violation of principles of natural justice. It has been contended that due to global pandemic of coronavirus and lockdown, their unit was not fully functioning and they had not received such notice of hearing in time and hence were unable to attend hearing and submit their contention and data. Hence, it is apparent from records that, the appellant had shown their difficulty due to nationwide lock down, but the adjudicating authority without giving further opportunity proceeded to decide the matter and confirmed the demand and held that the appellant neither submitted written submission and data for quantification of duty on pro-rata basis nor attended personal hearing. It is observed that considering the pandemic situation, the appellant should have been given another opportunity for presentation of their defence and data for quantification.

7.2. It is further observed that Hon'ble Tribunal, Ahmedabad while remanding the matter to the adjudicating authority, directed to verify the facts of inclusion of cost of dies and moulds in the final product of the appellant on pro rata basis and also to decide the issue of limitation by taking into account the overall facts., However, it is observed that the adjudicating authority has not followed said directions and also not given further opportunity to the appellant and thereby not followed the principles of natural justice. Hence, I find that the impugned order has been passed without following principles of natural justice.

8. It is observed that the 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 that failure to adhere to the principles of natural justice vitiates the order. The impugned OIO fails on this count and therefore needs to be set aside.

9. In view of the above observations, I find that the adjudicating authority in the present matter has adjudicated the case without complying the directions given by Hon'ble Tribunal vide their order dated 22.06.2011/05.07.2011. Orders arising on



account of denovo proceedings without compliance to the directions of higher appellate authorities cannot serve the purpose of the proceedings and becomes liable for remitting again for very same purpose. The adjudicating authority has also not given proper opportunity to the appellant and thereby not followed principle of natural justice. Further, the act of adjudicating authority by deciding the SCN without giving personal hearing is violative of principles of natural justice. Hence, without going into merit of the case, I set aside the impugned order and remand back the matter to the adjudicating authority to decide the case after after examination and verification of the fact of inclusion of cost of dies and moulds in the final product of the appellant on pro-rata basis and ensuring principle of natural justice.

10. In view of above discussion, I remand the case back to the adjudicating authority to pass an order afresh after giving the opportunity of natural justice to the appellant.

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

*Akhilesh Kumar*  
.. 17<sup>th</sup> March, 2021 ..

(Akhilesh Kumar)  
Commissioner (Appeals)  
Ahmedabad  
/03/2021

Attested

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

By R.P.A.D

To

M/s. Bhagwati Autocast Limited,  
Bavla-Sanand Road,  
Bavla, District-Ahmedabad

Copy to:

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

